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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1030

[DA-91-020]

Milk in the Chicago Regional Marketing Area; Revision of Supply Plant Shipping Percentages

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Revision of rules.

SUMMARY: This action revises certain provisions of the Chicago Regional milk order for the month of December 1991. The action reduces the shipping percentages for pooling individual supply plants by 4 percentage points (from 5 to 1 percent of receipts) and units of supply plants by 6 percentage points (from 10 to 4 percent of receipts). The revision is made in response to a request by Central Milk Producers Cooperative, a federation of cooperatives that represents producers who supply the market. The action is necessary to prevent uneconomic shipments of milk from supply plants to distributing plants.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, 202-720-6274.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Revision of Supply Plant Shipping Percentages: Issued November 27, 1991; published December 4, 1991 (56 FR 63470).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The action reduces the regulatory impact of the order on certain milk handlers and tends to ensure that the market will be adequately supplied with milk for fluid use with a smaller proportion of milk shipments from pool supply plants.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the provisions of § 1030.7(b)(5) of the Chicago Regional order.

Statement of Consideration

After consideration of all relevant material, including the proposal set forth in the aforesaid notice, and other available information, it is hereby found and determined that the supply plant shipping percentages should be lowered by 4 percentage points (from 5 to 1 percent of receipts) for individual supply plants and by 6 percentage points (from 10 to 4 percent of receipts) for supply plant units during December 1991.

Currently, the order provides that individual supply plants must ship at least 5 percent of milk receipts to other plants to qualify as pool plants while a unit of supply plants must ship at least 10 percent of total receipts for pooling purposes during the months of September through December. During other months the shipping standards are 3 percent for individual plants and 6 percent for a unit of plants.

The Chicago order provides that the market administrator may adjust the shipping standards for individual plants and units of plants by up to 2 percentage points. The order also provides that the Director of the Dairy Division may increase the shipping standards by up to 5 percentage points or decrease the shipping standards up to 10 percentage points. The adjustments can be made to encourage additional milk shipments or to prevent uneconomic shipments.

The revision was requested by Central Milk Producers Cooperative (CMPC), a federation of cooperative associations that represent a substantial number of the producers who supply the market. CMPC contends that a reduction of the shipping percentages is necessary to prevent uneconomic shipments of milk from distant supply plants solely for pooling purposes.

Based on supply and sales estimates, CMPC requested that the market administrator reduce the shipping percentages by 2 percentage points during December. A reduction of shipping percentages by the market administrator has been issued for December.

Based on the most recent supply and demand estimates, CMPC indicated that a further reduction of the shipping percentages for December was necessary. CMPC contends that in order to make the most efficient use of available milk supplies as much as possible of nearby milk supplies will have to be utilized with reliance on distant supplies only on days when nearer milk supplies have been exhausted. For the month of December, CMPC indicates that such efficiencies can only be realized if the shipping standards for individual plants and units of supply plants are reduced to 1 and 4 percent of receipts, respectively.

In view of the supply/demand relationship for the market, the supply plant shipping percentages should be reduced for December 1991. A reduction of the shipping percentages will contribute to orderly marketing in that costly and inefficient shipments of milk from distant supply plants will not be necessary. Thus, dairy farmers who have supplied the market will continue to have their milk pooled under the order.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to public interest in that:

(a) This revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the month of December;

(b) This revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this issue. No opposing views were received.

Therefore, good cause exists for making this revision effective upon publication in the Federal Register.

List of Subjects in 7 CFR Part 1030

Milk marketing orders.

It is therefore ordered, that the following provisions of § 1030.7(b) of the Chicago Regional milk order are hereby revised for the month December 1991.

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. The authority for 7 CFR part 1030 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

§ 1030.7 [Amended]

2. In the introductory text of § 1030.7(b), the provision "5 percent" is revised to "1 percent" and the provision "10 percent" is revised to "4 percent" for the month of December 1991.

Signed at Washington, DC, on December 19, 1991.

W.H. Blanchard,

Director, Dairy Division.

[FR Doc. 91–30959 Filed 12–26–91; 8:45 am]

BILLING CODE 3410–02–M

Commodity Credit Corporation

7 CFR Part 1403

Debt Settlement Policies and Procedures

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Final rule.

SUMMARY: A proposed rule was published in the Federal Register on May 21, 1991, at 56 FR 23250, amending 7 CFR part 1403, which sets forth the debt settlement policies and procedures of CCC. This final rule adopts the provisions of the proposed rule. The regulations at 7 CFR part 1403 are currently applicable to debts by and against CCC arising out of domestic transactions. This final rule amends the regulations to provide that they will be applicable to all debts by and against CCC, whether or not they arise from domestic transactions. This final rule also makes special provisions for collection of price support loans, amends other existing provisions for clarity and makes technical changes.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: Carol Spencer, Debt Management and Contract Procedures Branch, Financial Management Division, ASCS, (202) 720–8975.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in conformance with Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" because it will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs and prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action does not constitute a review as to need, currency, clarity, and effectiveness of these regulations under Departmental Regulation 1512–1. No sunset review date has been set for this regulation because review is ongoing.

This action will not increase the Federal paperwork burden for individuals, small businesses, and others and will not have a significant impact on a substantial number of small entities. Therefore, this action is exempt from the provisions of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This action will not have a significant impact specifically upon area and community development; therefore, review as established by Executive Order 12372 (July 14, 1982) was not used to assure that units of local government are informed of this action.

Background

The Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (the Act), (31 U.S.C. 3711 *et seq.*), and the joint regulations promulgated thereunder by the Comptroller General and the Attorney General (4 CFR parts 101–105) provide minimum standards for the administrative collection of claims by the United States. The Act also provides that nothing therein shall diminish the existing authority of the head of an agency to settle, compromise, or close claims. The CCC Charter Act, as amended (15 U.S.C. 714 *et seq.*), provides that CCC shall have authority to make final and conclusive settlement and adjustment of any claims by or against it, irrespective of the amount at issue. CCC is, therefore, not subject to the provisions of the Federal Claims Collection Act or its implementing regulations. However, it has been CCC policy to follow the Federal Claims Collection Standards (FCCS) to the maximum practicable extent. The FCCS require each federal agency to take aggressive action to collect debts owed it, and to cooperate with other federal agencies in their debt collection activities. Federal agencies are required to promulgate regulations consistent with the standards.

The regulations applicable to debts by and against CCC arising out of domestic transactions are currently set forth at 7 CFR part 1403. These transactions give rise to, among other types of claims, cargo losses and damage claims arising under title II of the Agricultural Trade Development and Assistance Act of 1954 ("Pub. L. 480"), as amended, or other export relief programs and section 416 of the Agricultural Act of 1949, as amended. Since CCC may, on occasion, enter into transactions outside of the United States, CCC has amended these regulations to provide that they will be applicable to all CCC transactions. This action ensures a uniform debt settlement policy for all CCC debts. This rule applies only to private debt. "Government-to-Government" debt settlement procedures are not affected.

This final rule also amends 7 CFR part 1403 to revise the definitions of "carrier" and "shipment" in order to include all CCC related transactions by all carriers, whether or not CCC actually owns the commodity being transported since, in many foreign transactions, CCC does not own the commodity but has provided significant financial assistance concerning the sale or shipment of the commodity.

In addition, this final rule amends 7 CFR part 1403 to clarify the manner in which administrative offset will be taken with respect to unsettled loans. Generally, the final rule provides that in order to adequately protect the rights of CCC debtors, similar to the procedure for other delinquent debts, administrative offset would not be taken until after a CCC loan has been delinquent for at least 30 days and the borrower has been timely notified that offset may be taken.

This final rule also amends 7 CFR part 1403 to provide that, with respect to debts resulting from price support loans, later payment interest shall begin to accrue from the date on which a claim is established, rather than from the date on which notice of the debt is first mailed or hand-delivered to the debtor. This change was necessary to prevent the charging of both loan interest and late payment interest during the period between the date of the demand letter and the date of claim establishment. As a result of this amendment, in order to maintain conformity, it was also necessary to change the date on which additional interest will be assessed on

debts arising from price support loans to sixty days after the late payment interest start date rather than ninety days after the late payment interest start date. Furthermore, since no late payment interest is being charged on debts arising from price support loans during the period between the date of the demand letter and the date of claim establishment, there is no need for late payment interest to be waived during that period. Therefore, the section providing for the waiver of late payment interest on a debt which is paid within 30 days after the date on which late payment interest began to accrue has been amended to exclude debts arising from price support loans.

Finally, this final rule makes minor technical changes to conform more closely with current procedures.

No comments were received on the proposed rule published in the Federal Register on May 21, 1991 (56 FR 23250).

List of Subjects in 7 CFR Part 1403

Claims, Income taxes, Loan programs—Agriculture.

Accordingly, 7 CFR part 1403 is amended as follows:

PART 1403—DEBT SETTLEMENT POLICIES AND PROCEDURES

1. The authority citation for 7 CFR part 1403 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c.

§ 1403.1 [Amended]

2. Section 1403.1 is amended by removing the phrase "arising out of domestic transactions".

3. Section 1403.3 is amended by revising the definitions of "Carrier," "Delinquent debt" and "Shipment" to read as follows:

§ 1403.3 Definitions.

* * * * *

Carrier means a person or other entity, including but not limited to railroads, motor carriers, ocean carriers or piggyback enterprises, which provide transportation or other transportation-related services for compensation.

* * * * *

Delinquent debt means: (1) Any debt owed to CCC that has not been paid by the date specified in the applicable statute, regulation, contract, or agreement; or

(2) any debt that has not been paid by the date of an initial notification of indebtedness mailed or hand-delivered pursuant to § 1403.4.

* * * * *

Shipment means a carload, truckload, containerload, or other conveyance load of freight shipped from one location by one shipper for delivery. Such shipment must move in accordance with the terms of a commercial or ocean bill or lading, or other similar agreement between the carrier and CCC. In the case of export shipments, the agreement may also be between the carrier and a private voluntary organization, foreign government, or the Agency for International Development.

* * * * *

4. Section 1403.4 is amended by revising paragraphs (a) introductory text, (a)(4) and (a)(5)(i) to read as follows:

§ 1403.4 Demand for payment of debts.

(a) When a debt is due CCC, an initial written demand for payment of such amount shall be mailed or hand-delivered to the debtor. If the debt is not paid in full by the date specified in the initial demand letter, or if a repayment schedule acceptable to CCC has not been arranged with the debtor, the initial demand may be followed by two subsequent written demands at approximately 30-day intervals. The initial or subsequent demand letters shall specify the following:

* * * * *

(4) CCC's intent, if applicable, to collect the debt 30 days from the date of the initial demand letter, or other applicable period of time, by administrative offset from any CCC or ASCS payments due or to become due to the debtor, and that the claim may be reported to other agencies of the Federal government for offset from any amounts due or to become due to the debtor;

(5) * * *

(i) Existence or amount of the debt, it must be made within 15 days from the date of the letter, unless a different time period is specified in the contract, agreement or program regulation;

* * * * *

5. Section 1403.7 is amended by revising paragraph (b)(3) and adding paragraph (t) to read as follows:

§ 1403.7 Collection by administrative offset.

* * * * *

(b) * * *

(3) The debtor has been notified in writing that the debt may be collected by administrative offset if not paid; and

* * * * *

(t)(1) Notwithstanding the provisions of paragraph (b) of this section and § 1403.4, with respect to debts which are based upon an unsettled CCC loan, offset action may be taken when the debtor has been:

(i) Provided written notification of the maturity date of the loan and the debtor has not repaid the loan by the maturity date or, in the case of a nonrecourse price support loan, has not repaid the loan or forfeited the loan collateral to CCC by the date specified by CCC;

(ii) Notified of CCC's intent to establish an account on a debt record 30 days after the maturity date, or other applicable period of time, if the loan is not settled in accordance with the loan agreement;

(iii) Notified of the right to pursue an administrative appeal in accordance with Part 780 of this title if such an opportunity has not been previously provided;

(iv) Provided an opportunity to inspect and copy CCC records related to the debt; and

(v) Notified in writing that the debt may be collected by administrative offset if the loan is not repaid or, with respect to nonrecourse loans only, settled through forfeiture of the loan collateral.

(2) After a claim has been established by CCC with respect to a loan which has not been settled by the date specified in the loan agreement:

(i) In the event CCC takes possession of the collateral which is security for a nonrecourse of recourse loan made in accordance with parts 1421, 1427, 1434, or 1435 of this chapter, the value of such loan collateral shall be determined by CCC in accordance with the provisions of such parts which are used to determine the settlement value of the collateral. The value of such collateral shall be applied to the claim. Any amount remaining due on the claim must be paid by the debtor.

(ii) In the event CCC takes possession of the collateral which is the security for any other loan, the value of such collateral, as determined by CCC, less any costs incurred by CCC in taking possession and disposing of the collateral, shall be applied to the claim. Any amount remaining due on the claim must be paid by the debtor.

6. Section 1403.9 is amended by revising paragraphs (d)(2), (e), and (g) to read as follows:

§ 1403.9 Late payment interest and administrative charges.

* * * * *

(d) * * *

(2) With respect to debts not resulting from a statute, regulation, contract or agreement containing specific provisions for late payment interest and payment

due date, late payment interest shall begin to accrue from the date on which notice of the debt is first mailed or hand-delivered to the debtor, except that, with respect to debts resulting from price support loans, late payment interest shall begin to accrue from the date on which a claim is established.

* * * * *

(e)(1) Except as specified in paragraphs (a)(2) and (e)(2) of this section, an additional interest rate of three (3) percent per annum will be assessed on any portion of a debt which remains unpaid 90 days after the date described in paragraph (d)(1) or (d)(2) of this section, if no repayment schedule satisfactory to CCC has been agreed upon. Such rate will be assessed retroactively from the date late payment interest began to accrue and apply on a daily basis. Such rate shall continue to accrue until the delinquent debt has been paid.

(2) With respect to debts resulting from price support loans, an additional interest rate of three (3) percent per annum will be assessed on an portion of a debt which remains unpaid 60 days after the date on which a claim was established. Such rate will be assessed retroactively from the date of claim establishment and apply on a daily basis. Such rate shall continue to accrue until the delinquent debt has been paid.

* * * * *

(g) When a debt is paid in partial or installment payments, payments will be applied first to administrative charges, second to additional interest assessed in accordance with paragraph (e) of this section and late payment interest, and third to outstanding principal.

7. Section 1403.10 is amended by revising paragraphs (a) and (b) to read as follows:

§ 1403.10 Waiver of late payment interest, additional interest and administrative charges.

(a) Except for debts resulting from price support loans, CCC shall waive the collection of late payment interest and administrative charges on a debt or any portion of a debt which is paid within 30 days after the date on which late payment interest began to accrue.

(b) CCC may waive the assessment and collection of all or a portion of the additional interest on debts which are appealed in accordance with 7 CFR part 780, or other applicable appeal procedures, from either the date of the appeal or the date of delinquency, as determined by CCC, until the date a final administrative determination is issued. However, with respect to CCC programs administered by the Foreign Agricultural Service, CCC shall waive the assessment and collection of additional interest on debts which are appealed in accordance with 7 CFR part 780, or other applicable appeal procedures, from the date of delinquency until 30 days after the date of the letter informing the appellant of the final administrative determination. The waiver provisions of the paragraph shall not apply during any period of delay due to:

* * * * *

8. Section 1403.11 is revised to read as follows:

§ 1403.11 Administrative appeal.

If the opportunity to appeal the determination has not previously been provided under part 24 or 780 of this title or any other appeal procedure, a debtor may obtain an administrative review under part 780 of this title, or other applicable appeal procedures, of CCC's determination concerning the existence or amount of a debt, if a request is filed with the authority who made the determination within 15 days of the date of CCC's initial demand letter, unless a longer period is specified in the initial demand letter.

9. Section 1403.12 is revised to read as follows:

§ 1403.12 Additional administrative collection action.

Nothing contained in this part shall preclude the use of any other administrative or contractual remedy which may be available to CCC to collect debts owed to the Government.

10. Section 1403.16 is amended by revising paragraph (a) and adding paragraph (l) to read as follows:

§ 1403.16 Referral of delinquent debts to credit reporting agencies.

(a) This section specifies the procedures that will be followed by CCC and the rights that will be afforded to farm producers when CCC reports delinquent debts to credit reporting agencies.

* * * * *

(l) Notwithstanding the provisions of paragraphs (a) through (k) of this section, all commercial debts owed by debtors other than farm producers may be reported to credit reporting agencies.

Signed at Washington, DC, on December 19, 1991.

John A. Stevenson,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-30869 Filed 12-26-91; 8:45 am]

BILLING CODE 3410-05-M

Farmers Home Administration

7 CFR Parts 1910, 1930, 1940, 1944, 1951 and 1965

Implementation of Sections 206, 207 and 401 of the Housing and Urban Development Reform Act of 1989 as Amended by the Cranston-Gonzalez National Affordable Housing Act of 1990

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to implement recently enacted legislation and to incorporate comments from the public which were solicited during the interim rule stage published in the **Federal Register** 55 FR 29558 and 55 FR 25072. The intended outcome is to provide guidance on: charging a surcharge on occupied units in projects with initial loans made or insured pursuant to a contract entered into on or after December 15, 1989; registration and reporting requirements of persons paid to influence the making of an FmHA housing loan and or grant; and equity takeout incentives for new rural rental housing loans. There are portions of the aforementioned Interim Rule (55 FR 29558) which will be more appropriately addressed in a Final Rule dealing with prepayment and tenant displacement issues.

EFFECTIVE DATE: January 27, 1992.

FOR FURTHER INFORMATION CONTACT: Regarding section 207, contact Carolyn B. Cooksie, Senior Loan Specialist, Multiple Housing Servicing and Property Management Division, room 5328-S, telephone (202) 382-9728. Regarding section 401 and section 206, contact Joyce H. Akers, Senior Loan Specialist, Multiple Family Housing Processing Division, room 5347-S, telephone (202) 382-1622. The address is: USDA-FmHA, South Agriculture Building, 14th and Independence Ave., SW., Washington DC 20250.

SUPPLEMENTARY INFORMATION:

Classification

This rulemaking action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291 and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, Federal, State or local Government agencies, or

geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–90, an Environmental Impact Statement is not required.

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Nos:

10.405 Farm Labor Housing Loans and Grants
10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.415 Rural Rental Housing Loans
10.417 Very Low Income Housing Repair Loans and Grants
10.420 Rural Self-Help Housing Technical Assistance Grants
10.427 Rural Rental Assistance Payments
10.433 Housing Preservation Grants

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice(s) to 7 CFR part 3015, subpart V, Nos. 10.410 and 10.417 are excluded from the scope of Executive Order 12372 which requires Intergovernmental consultation with State and local officials. The remaining programs are subject to intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program, and the reporting/registration requirements are imposed by statute.

Background and Addressing Comments (55 FR 29558)

An interim rule was published in the **Federal Register** (55 FR 29558) on July 20, 1990. It amended several regulations to facilitate the implementation and intent of the HUD Reform Act of 1989.

Comments on the interim rule were invited from the public until September 18, 1990. Seven comments were received from the public and were carefully considered.

One commenter stated § 1910.4 should be enlarged to cover the situation where an applicant is determined eligible but notified by the AD–622 that funds are not available at that time and questioned whether this is an adverse decision. Determining eligibility, issuance of AD–622s and adverse decisions were not part of the HUD Reform Act and will not be addressed at this time. This issue will be addressed in a proposed rule to be published in the **Federal Register**.

One commenter stated the definition of other government assistance included tax benefits under related assistance and questioned whether this assistance should be identified on SF 424.2 as an annual amount of low income housing tax credit, a total 10 year amount or developer's fee. The SF 424.2 should indicate that tax credits will be sought; however, an arbitrary amount would not be appropriate. On Form FmHA 1924–13, if a tax credit fee is indicated, such fee should be identified and the basis for calculating the fee should be defined.

One commenter recommended all complete preapplications on hand be ranked and included in the weighted-decision process to ensure those preapplications on hand less than 45 days would not be excluded from funding consideration. Timeframes were not part of the HUD Reform Act and will not be addressed at this time. However, this issue is addressed in the "Processing Preapplications for Rural Rental Housing (RRH) Assistance" changes which were published in the **Federal Register** as a proposed rule on October 31, 1991.

One commenter recommended processing timeframes and standards for preapplications should apply to applications as well, and, these standards and timeframes should be enlarged to include State Office housing staffs. Again, this issue will be addressed in a proposed rule to be published in the **Federal Register**.

One commenter stated the 45 day review period for District Directors to determine eligibility, feasibility and ranking must be met. Again, the processing timeframe was not a part of the HUD Reform Act and this issue will not be addressed at this time. This issue will be addressed in a proposed rule to be published in the **Federal Register**.

Five (5) commenters addressed the requirements or recommended changes to Exhibit A–9 of subpart E of part 1944 which was developed as a guide for administrative processing when FmHA applicants are applying for low-income housing tax credits. In most cases, changes were suggested based on the administrative process utilized by the commenter's state low-income housing tax credit agency. The Agency has reviewed all of the comments related to the processing relationships between FmHA and the State Agency. Exhibit A–9, now renumbered as Exhibit A–10, was developed in concert with the FmHA and the National Council of State Housing Finance Agencies. We have made minor editorial changes to the exhibit, added a paragraph providing FmHA State Offices the option of using the guide as written or developing their own State supplement complementing the local State Agency's administrative process for processing tax credits, and removed the processing timeframes at various milestones.

A tenant advocate commented that the interim rule covering § 1965.89 states that guaranteed equity loans twenty years after post December 15, 1989, loans are made are provided to ensure that projects remain in the program for the remainder of the loan period while in reality these loans will be available as an inducement to borrowers to take the initial loan. All references to the reason for the provision have been removed from the regulation.

A tenant advocate stated that § 1965.89 should be amended to require evidence that the equity loan will not impose an undue hardship on tenants. This has been added although the reference to the procedure for equity loans would have assured this condition.

One commenter stated there is a basic conflict between two rules published by FmHA on July 20, 1990. FmHA recognizes these conflicts. All comments received on §§ 1944.215, 1944.236, 1944.237, 1944.238, 1951.251, and 1965.90 will be consolidated with comments received pursuant to the proposed rule published on July 20, 1990 (55 FR 29601), and will be addressed in a forthcoming Final Rule on prepayment and tenant displacement issues.

Background and Discussion of Comments (55 FR 25072)

An interim rule was published in the **Federal Register** (55 FR 25072) on June 20, 1990. It amended several regulations to facilitate the implementation and intent of the HUD Reform Act of 1989. The changes in this final rule are based upon the comments, as discussed below, and the Cranston-Gonzalez National Affordable Housing Act of 1990, which changed much of the law to allow

FmHA to be much more responsive to the comments.

Comments on this interim rule were invited from the public until August 20, 1990. Comments were received from eleven sources (of the public) and were all carefully considered.

Nine comments were received concerning various issues related to exhibit B of subpart K of part 1951, "Occupancy Surcharge Payments."

Five of the comments were concerned with whether collecting additional monies from tenants is the appropriate method to fund the equity takeout, and two of these comments gave alternative routes for funding the equity takeout. The equity takeout provisions were authorized in a mandate allowing each unit in the project to be at the same surcharge rate and the tenant only paying the affordable part of the rate. That deletes much of the bulky recording requirements and makes the surcharge assessment easy to keep up with since the bottom line of whether a tenant pays the surcharge, and in what amount, will now be based strictly on income level as reported on the present tenant certification.

Three commenters were concerned over the impact of surcharge on tax credits. The new law which requires that no tenant pay more than 30 percent of their income for rent, utilities and occupancy surcharge will alleviate most of the tax credit issue.

Three commenters were concerned with the provision that "replacement tenants" pay the same surcharge level as the previous tenant would cause undue hardship on some tenants. This is no longer a problem since the "replacement tenant" has been deleted from the regulation and each tenant will now pay surcharge at the rate they can afford up to 30 percent. The rate any tenant pays is no longer dependent upon the rate the previous tenant paid.

One commenter asked for a clarification of the definition of "initial tenant." The term "initial tenant" has been deleted from the regulation and is no longer applicable.

Three commenters said that FmHA's interpretation of the law was wrong when we said that in year 20 of the loan the annual surcharge increase period stops, but the surcharge will continue at that rate for the remaining life of the loan. We believe that that is indeed what is written into the law so this will remain the same in the final regulation.

Three commenters said that they did not believe the law was interpreted by FmHA correctly when we said that if a subsequent loan was made that the surcharge annual increase period extends for an additional 20 year period. Since the Cranston-Gonzalez Act mandated that subsequent loans will not make projects subject to the surcharge, this is no longer applicable and has been deleted from the regulation.

One commenter was concerned that prospective tenants, when filing an application, could not be advised in advance of the specific amount of rent they are required to pay since the surcharge is based upon income levels. Presently, when an application is filed and income verified, the determination could be made at that time of how much rent that applicant is eligible to pay. The surcharge rate, though an additional charge, could also be arrived at since it is also based on the applicant's present income level.

Two commenters questioned whether Congress had really looked at the continued affordability of surcharge to the rental assistance account since rental assistance will now be depleted much quicker. FmHA cannot answer that question.

One commenter suggested that FmHA create different Tenant Certifications and Project Worksheets to use in projects subject to the surcharge and continue to use the present forms for projects not subject to surcharge. Two commenters reminded FmHA that those two forms need to be revised to incorporate the surcharge requirements. The Tenant Certification and Project Worksheet forms will be revised to include the surcharge requirements. It is our opinion that to have two versions of the same form would be costly and confusing. The forms will be revised for where only the applicable entries to that tenant will need to be made.

One commenter suggested that FmHA incorporate exact language in the regulation for the lease clause. We have not incorporated the exact lease language but FmHA has expanded on the requirements of what is expected to be incorporated into that lease clause.

Three commenters wanted FmHA to allow the annual surcharge increase to become effective on the same date as the annual tenant recertification. We reviewed this matter closely and are still of the opinion that the surcharge anniversary date must be a date separate and apart from the recertification date in order to keep the automated system up with the annual increases and keep each unit at the same surcharge rate.

Three comments were received regarding subpart S of part 1940, "Accountability Requirements of Persons Paid to Influence the Making of an FmHA Housing Loan and/or Grant." Two commenters opposed the regulation in its entirety commenting that compliance with same was too burdensome. The subject regulation was developed to implement a mandatory provision of the HUD Reform Act and FmHA believes it implemented same with the minimum amount of burden to the public.

One commenter urged FmHA to adopt the prelitigation exception proposed by HUD and mentioned in FmHA's rulemaking document. HUD requested comments in this area especially on how to minimize the potential for abuse with a prelitigation exception. Public comment did not provide enough support or guidance in this area. Therefore HUD and FmHA have decided not to adopt this provision.

One commenter felt the regulation was unfair to applicants in our Multi-Family Housing (MFH) Program as opposed to our Single Family Housing (SFH) Program. FmHA recognizes that the majority of burden to comply with this regulation is on applicants for our MFH program. This is because the regulation deals with persons paid to influence the making of an FmHA housing loan and/or grant. Applicants in our SFH program are very-low and low-income families who are unable to obtain credit elsewhere. They generally do not have the resources to "pay" someone to influence the making of the FmHA loan. On the other hand, applicants in our MFH program generally have more resources and often pay outside parties to assist them in completing a loan proposal.

Comments were also received requesting FmHA to provide categorical exclusions from registration and reporting requirements for certain professions. FmHA considered these comments, and does not believe categorical exclusions can meet the intent of the HUD Reform Act. The most common comment was for a categorical exclusion for packagers. Generally, a packager assembles the documents necessary to submit a complete proposal to FmHA for consideration. Such activities are exempted under the current regulations. However, not all packagers provide the same services. Some may be paid to influence the making of the FmHA loan. Since there is no practical way for FmHA to know what services are being paid for by an applicant, a categorical exclusion would not meet the registration and reporting requirements of the HUD Reform Act.

Subpart S of part 1940, subparts A and D of part 1944, and subpart F of part 1951 as published in the interim rule, are adopted as final. FmHA is adding references to subpart S of part 1940 in subparts I, J and N of part 1944.

List of Subjects

7 CFR Part 1910

Applicants, Credit, Marital status, Discrimination, Sex discrimination.

7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income Housing—Rental, Reporting requirements.

7 CFR Part 1940

Accountability, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income Housing—Rental, Reporting requirements.

7 CFR Part 1944

Administrative practice and procedure, Aged, Farm labor Housing, Grant programs—Housing and community development, Handicapped, Home improvement, Loan programs—Housing and community development, Low and moderate income Housing—Rental, Migrant labor, Mobile homes, Mortgages, Nonprofit organizations, Public Housing, Rent subsidies, Rural Housing, Subsidies.

7 CFR Part 1951

Account Servicing, Grant programs—Housing and community development, Loan programs—Housing and community development, Reporting requirements, Rural areas.

7 CFR Part 1965

Administrative practice and procedure, Low and moderate income Housing—Rental, Mortgages.

Accordingly, the interim rules published on June 20, 1990 (55 FR 25072), and July 20, 1990 (55 FR 29558) of chapter XVIII, title 7, Code of Federal Regulations are adopted as a final rule with the following amendments:

PART 1910—GENERAL

1. The authority citation for part 1910 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Receiving and Processing Applications

§ 1910.1 [Amended]

2. Section 1910.1 is amended by removing paragraph (d).

3. Section 1910.3 is amended by redesignating current paragraphs (a) (3), (4) and (5) as paragraphs (a) (4), (5) and (6), respectively, and adding a new paragraph (a) (3) to read as follows:

§ 1910.3 Receiving applications.

* * * * *

(a) * * *

(3) SF 424.2, "Application for Federal Assistance (For Construction)," with the requirements outlined in the applicable program exhibits will be used by all applicants applying for RRH and LH loans.

* * * * *

§ 1910.3 [Amended]

4. Section 1910.3 is amended in newly redesignated paragraph (a)(4)(i) by changing the reference from "paragraph (a)(3)(ii)" to "paragraph (a)(4)(ii)", and in newly redesignated paragraph (a)(4)(ii), by changing the reference from "paragraph (a)(3)(i)" to "paragraph (a)(4)(i)."

§ 1910.4 [Amended]

5. Section 1910.4 (a)(9) is amended by changing the reference from "§ 1910.3 (a)(3) and (4)" to "§ 1910.3 (a)(4) and (5)."

§ 1910.4 [Amended]

6. Section 1910.4 (b)(14) is amended by changing the reference from "§ 1910.3 (a)(3)(i)" to "§ 1910.3 (a)(4)(i)."

7. Section 1910.4 (i) is amended by italicizing "Except for RRH and LH loans" in the first sentence, italicizing "For RH loans" in the third sentence, revising the fourth sentence and adding a new sentence after the fourth sentence to read as follows:

§ 1910.4 Processing applications.

* * * * *

(i) * * * RRH and LH preapplications must be determined eligible and feasible (RRH preapplications must also be ranked) and the applicant notified in writing in accordance with applicable program regulations not later than 45 days after receipt of a complete application. This eligibility determination will be made regardless of ranking or funding levels * * *

* * * * *

PART 1930—GENERAL

8. The authority citation for part 1930 continues to read as follows:

Authority: 42 U.S.C. 1430; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

9. Exhibit B to subpart C is amended by revising paragraphs II EE and VIII A–3 to read as follows:

Exhibit B—Multiple Family Housing Management Handbook

* * * * *

II. Definitions

* * * * *

EE. Occupancy Surcharge. A monthly surcharge on units in projects where the initial loan was made or insured pursuant to a contract entered into on or after December 15, 1989. This surcharge will be collected from tenants by borrowers and transmitted to FmHA and set aside to offset any rent increases which may result when the project becomes eligible for a guaranteed equity loan, 20 years from the date of the loan in the project which made the project subject to surcharge.

* * * * *

VIII. Lease Agreements

* * * * *

A. * * *

3. Projects in which occupancy surcharge collection is required should contain an appropriate lease clause permitting possible increases in the surcharge assessed. This clause should contain at least the following:

a. That occupancy surcharges are mandated by law, therefore, they must be paid by the tenant in addition to regular rent. If they are not paid, these unpaid surcharges constitute good cause for possible eviction.

b. That the occupancy surcharge unit rate will began at $2 per unit in the first year and will increase annually on the surcharge anniversary date by $2 per unit for a 19 year period.

c. That the portion of the unit surcharge assessment which the tenant pays will be based upon the tenant household income, and will not cause the tenant's contribution for rent and occupancy charge, plus utility allowance to exceed 30 percent of adjusted income.

d. That tenant households may experience increases or decreases in the amount of occupancy surcharge they pay prior to the expiration of the lease.

* * * * *

Exhibit B to Subpart C [Amended]

10. Exhibit B to subpart C is amended in paragraph II. RR. in the first sentence by removing the comma after the word "allowance" and inserting the words "and occupancy surcharge."

Exhibit B to Subpart C [Amended]

11. Exhibit B to subpart C is amended in paragraph VII. F. 5. b. by inserting a comma and the words "or maximum occupancy surcharge," in the second sentence after the words "market rent."

Exhibit B to Subpart C [Amended]

12. Exhibit B to subpart C is amended in paragraph VII. F. 5. c. in the third sentence by inserting a comma and removing the word "and" after the word "credit" and inserting the words "and occupancy surcharges" between the words "overages" and "while."

Exhibit E of Subpart C [Amended]

13. Exhibit E of subpart C is amended in paragraph II. F. in the first sentence by adding the words "and occupancy surcharge" between the words "allowance" and "when."

PART 1940—GENERAL

14. The authority citation for part 1940 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

15. Section 1940.551 (c) is amended by revising the last sentence to read as follows:

§ 1940.551 Purpose and general policy.

* * * * *

(c) * * * FmHA will publish a Notice of Availability of Rural Housing funds in the **Federal Register** each year.

PART 1944—HOUSING

16. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart E—Section 515 Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations

17. Section 1944.205 is amended by revising the definition of "State Agency" to read as follows:

§ 1944.205 Definitions.

* * * * *

State Agency. The Agency within a State that has been given the responsibility to allocate low-income tax credits.

* * * * *

§ 1944.212 [Amended]

17a. Section 1944.212(n) is amended by changing the reference "§ 1944.215(t)" to read "§ 1944.215(v)."

18. Section 1944.213 is amended by revising paragraph (a) to read as follows:

§ 1944.213 Limitations.

(a) *Loan Limits.* The State Director must certify that assistance provided any housing project is not more than is necessary to make the project affordable. The applicant must disclose, at all times, beginning with the preapplication package, other Government assistance, as defined in § 1944.205 of this subpart, proposed for the project. At the time of loan approval, the State Director will take into account any other such assistance when determining the FmHA loan amount to be granted. SF 424.2, "Application for Federal Assistance (For Construction)" will be used by an applicant to disclose all assistance being sought.

* * * * *

§ 1944.213 [Amended]

19. Section 1944.213(b)(1) is amended by changing the reference "1944.215(w)" to read "1944.215(v)."

20. Section 1944.231 is amended by redesignating current paragraph (a)(9)(iii) as paragraph (a)(9)(ii)(C), and by revising paragraph (a)(9)(i)(D) and newly designated paragraph (a)(9)(ii)(C) to read as follows:

§ 1944.231 Processing preapplications.

* * * * *

(a) * * *

(9) * * *

(i) * * *

(D) After a preapplication is determined eligible, feasible and ranks high enough for funding in the current fiscal year, if applicable, a copy of the AD–622 and related documentation will be forwarded to the State Agency in accordance with exhibit A–10 of this subpart or any State supplement.

* * * * *

(ii) * * *

(C) After a preapplication is determined eligible, feasible and ranks high enough for funding in the current fiscal year, if applicable, a copy of the AD–622 and related documentation will be forwarded to the State Agency in accordance with Exhibit A–10 of this subpart or any State supplement.

* * * * *

§ 1944.231 [Amended]

21. Section 1944.231 (a)(9)(ii)(A)(*5*) is amended by changing the reference "§ 1944.215(p)" to read "§ 1944.215(r)."

22. and 23. Exhibit A–10 of subpart E of part 1944 is revised to read as follows:

Exhibit A–10—Administrative Process for Combining Farmers Home Administration (FmHA) Assistance with Low-Income Housing Tax Credits

I. Purpose

A. This exhibit will be used by States to coordinate efforts with State Agencies administering tax credits. This exhibit will be utilized unless a State develops its own State supplement in which case the State supplement will supersede this exhibit.

B. The State Agency administering tax credits is required under section 42 of the U.S. Internal Revenue Code to select projects to receive the tax credits from applications according to tax credit allocation plans developed by the State Agency. Each application submitted to the State Agency is to be evaluated to determine the amount of credit necessary to make the proposal financially feasible and viable. When making this evaluation, the State Agency is required to consider the "sources and uses" of funds and the total financing planned for the project, as well as the proceeds expected to be generated by reason of tax benefits.

II. Administrative Process

A. FmHA will review preapplications from applicants seeking FmHA assistance when those applicants submit SF 424.2, "Application for Federal Assistance (For Construction)," and the requirements of Exhibit A–6 of this subpart. When a preapplication is determined by FmHA to be eligible, feasible and has sufficient points to be funded, the applicant will be notified by issuance of an AD–622, "Notification of Preapplication Review," to develop a complete loan application. The State Agency will also be sent a copy of Form AD–622 with a copy of SF 424.2 on which FmHA based its preliminary determination regarding funding. When a preapplication is determined by FmHA to be eligible and feasible but lacks sufficient priority points for funding consideration, or, if a preapplication is rejected by FmHA, the applicant(s) and the State Agency will only receive a copy of the AD–622 in accordance with § 1944.231(a)(9)(i) of this subpart.

1. Under the State allocation plan criteria, only projects receiving a favorable review, which reflect they are likely to be funded in the current fiscal year, will be eligible to apply to the State Agency for low income tax credit allocations. It is the responsibility of the applicant to provide the State Agency with any additional information or clarification of funding sources as may be necessary. The State Agency will evaluate the applicant's request for a tax credit allocation in accordance with its application processing criteria, using the AD–622 and any attachments. When the evaluation is completed, a copy of the tax credit reservation will be transmitted to FmHA by the State Agency.

2. After FmHA finalizes its processing of SF 424.2 and related materials constituting a full loan application, FmHA will submit to the State Agency a copy of Form FmHA 1944–51, "Multiple Family Housing Obligation—Fund

Analysis," as well as a copy of the updated financial assistance analysis.

3. The State Agency will then evaluate the project based on any changes in funding sources and amounts resulting from the FmHA loan obligation. A formal tax credit commitment is made by the State Agency at this time and a copy of the tax credit commitment notice will be sent to FmHA by the State Agency. Since the loan obligation and the tax credit commitment are likely to occur in one calendar year and the final loan closing and the tax credit allocation in a later calendar year, the State Agency may award a carryover commitment to the project. A carryover commitment provides that the project must be placed in service by the end of the second calendar year following the year in which the carryover is awarded.

B. At loan closing, FmHA will send the final terms of the FmHA loan to the State Agency. The State Agency will make a final tax credit award calculation based upon any changes in the FmHA loan which may have taken place between obligation and closing. The State Agency will allocate the tax credits based on documentation received either at loan closing or immediately after loan closing. An executed Form 8609, "Low-Income Housing Credit Allocation Certification," will be transmitted to FmHA by the State Agency. Form 8609 will be retained in the project file for the life of the loan, along with supporting final documentation on the sources and uses of funds upon which the low-income housing tax credit allocation was made.

III. In evaluating projects to determine tax credit awards, the State Agency may rely upon the loan amount and terms determined by FmHA. If FmHA also provides rental assistance to units in the project, the State Agency may rely on FmHA's judgment and determination that such assistance is necessary.

IV. The State Agency and FmHA will transmit to each other, as soon as possible, the appropriate documentation at each milestone in the loan processing/tax credit allocation process. Materials transmitted and correspondence received will be retained by FmHA as part of the permanent project file.

V. Form 8609 will be issued by the State Agency in accordance with authorizing statutes to ensure that financial assistance provided on behalf of the project is not more than is necessary to provide affordable housing.

VI. The FmHA State Director will make a certification by Memorandum to the FmHA Administrator that the assistance provided to the project is not more than is necessary to make the project affordable. This certification will be based on FmHA processing and the State Agency's certification (Form 8609). The State Director's certification memorandum and State Agency certification will be filed in the FmHA loan docket with other loan security instruments and kept as a permanent part of the loan file for the life of the loan.

VII. A diagram of the administrative process between FmHA and the State Agency is provided as part of this exhibit.

Subpart I—Self-Help Technical Assistance Grants

24. Section 1944.408 is added to read as follows:

§ 1944.408 Accountability.

Applicants should be made aware of the accountability requirements of persons paid to influence the making of an FmHA housing loan and/or grant as described in subpart S of part 1940 of this chapter.

Subpart J—Section 504 Rural Housing Loans and Grants

25. Section 1944.466 is added to read as follows:

§ 1944.466 Accountability.

Applicants should be made aware of the accountability requirements of persons paid to influence the making of an FmHA housing loan and/or grant as described in subpart S of part 1940 of this chapter.

Subpart N—Housing Preservation Grants

26. Section 1944.662 is added to read as follows:

§ 1944.662 Accountability.

Applicants should be made aware of the accountability requirements of persons paid to influence the making of an FmHA housing loan and/or grant as described in subpart S of part 1940 of this chapter.

PART 1951—SERVICING AND COLLECTIONS

27. The authority citation for part 1951 continues to read as follows:

Authority: U.S.C. 1989, 42 U.S.C. 1480, 5 U.S.C. 301, 7 CFR 2.70.

Subpart K—Predetermined Amortization Schedule System (PASS) Account Servicing

28. Section 1951.504 is amended by revising paragraph (k) and (l) to read as follows:

§ 1951.504 Definitions and statements of policy.

* * * * *

(k) *Occupancy surcharges.* A monthly surcharge on units in projects where the initial loan was made or insured pursuant to a contract entered into on or after December 15, 1989. These surcharges will be collected from the tenant by the borrower on the same day and in addition to regular rents. The amounts to be collected will be in accordance with exhibit B of this subpart.

(l) *Overage.* This term refers to both "overage" and "surcharge" described in exhibit H to subpart C of part 1930 of this chapter.

* * * * *

29. Section 1951.509 is revised to read as follows:

§ 1951.509 Occupancy surcharges.

(a) *Authorization to Collect Occupancy Surcharge.* Public Law 101–235 enacted December 15, 1989, and amended by Public Law 101–625, prescribes provisions for FmHA to collect an additional monthly amount from borrowers on all initial section 515 loans made or insured pursuant to a contract entered into on or after December 15, 1989.

(1) A contract entered into for this purpose is when a completed Form FmHA 1944–51, "Multiple Family Housing Obligation—Fund Analysis," is properly delivered to the borrower on or after December 15, 1989. (That delivery date is the date entered in Item 51 on Form FmHA 1944–51).

(2) The term *occupancy surcharge* shall be used hereafter to describe this additional monthly charge.

(b) *Occupancy Surcharge Payments.* These monthly payments shall be made from project income which will be collected from tenants or from subsidy which the tenant will be entitled to. The amount of surcharge assessed per unit, in the initial year of operation will be $2 per unit. This surcharge assessment will increase by $2 per unit each year thereafter for 19 years. The amount of the surcharge assessment which the tenant pays will be based on the income level of each tenant household. Tenant households who pay more than 30 percent of their annual adjusted income in rent and utilities will not be required to pay occupancy surcharge.

(1) Annual increases will cease 20 years from the date of the first surcharge payment due on the initial or oldest loan in the project.

(2) Surcharge payments will continue after the annual increase period has expired, but surcharge unit assessments will remain at the levels established at year 20 of the initial loan for the remaining life of the loan.

(3) If a subsequent loan is made and the initial loan in the project is subject to occupancy surcharge, the annual increase period will still expire 20 years from the first surcharge payment due on the initial loan.

(c) *Increases in Tenant Contribution Due to Occupancy Surcharges.* Borrowers/Managers are responsible for initiating and monitoring surcharge annual increases and all surcharge

increases and decreases due to change in tenant contributions. These changes require no prior review by FmHA. All tenants must be notified of any changes in their surcharge contribution in the following manner:

(1) Tenants moving into newly constructed projects in their first year of operation should be informed of the occupancy surcharge requirements when their lease and initial tenant certification is signed. They should also be apprised at that time of possible surcharge changes based on their income levels.

(2) When there are surcharge changes due to income changes and regular recertifications, the current signed tenant certification showing the level of surcharge due will serve as notification of the change.

(3) Tenants who experience surcharge changes due to the annual $2 per unit increase on the surcharge anniversary date must be sent a notification of the change in accordance with exhibit B of this subpart.

(d) *Occupancy Surcharge Account.* Occupancy surcharge monies collected by FmHA will be deposited in the Rural Housing Insurance Fund (RHIF) in such a manner as to accrue interest on the total amount of funds collected. These monies will be made available only for payments of principal and interest on guaranteed equity loans made under the authorization of section 515 of the HUD Act of 1989. Payments from the occupancy surcharge account will only be in amounts necessary to ensure that additional project expense from the incurred guaranteed equity loan does not raise rent payments above prescribed maximum rent levels necessary to operate the project. Any monies not expended in the project from which the payments were made will be used in other projects to make payments of principal and interest on a guaranteed equity loan.

(e) *Occupancy Surcharge Takeout.* The method for allowing payments on these guaranteed equity loans out of the occupancy surcharge account will be forthcoming a such time as needed and will conform with appropriate legislative requirements in effect at that time.

(f) *Collection of Occupancy Surcharge by FmHA.* The policies and methods for collecting surcharge are set forth in exhibit B of this subpart.

30. Exhibit B of subpart K is revised to read as follows:

Exhibit B of Subpart K—Occupancy Surcharge Payments

I. Objectives

This exhibit prescribes the methods for arriving at monthly occupancy surcharge rates for tenants in Farmers Home Administration (FmHA) Rural Rental Housing (RRH) and Rural Cooperative Housing (RCH) section 515 projects. This exhibit affects all initial loans made or insured pursuant to a contract entered into (when a properly completed Form FmHA 1944–51, "Multiple Family Housing Obligation—Fund Analysis," is delivered to the borrower. This delivery date is the date entered in item 51 on the 1944–51) on or after December 15, 1989.

II. Eligible Projects

A. Initial loans made pursuant to contracts entered into on or after December 15, 1989, will be subject to all occupancy surcharge requirements contained within this exhibit.

B. Subsequent loans will be subject to occupancy surcharge unless the initial loan in the project is subject to occupancy surcharge.

C. Project consolidations will make the new consolidated project subject to occupancy surcharge when one or more of the loans are subject to occupancy surcharge and will be handled in accordance with subpart B of part 1965 of this chapter.

III. Initial Understanding With Borrower

All RRH and RCH applicants will be informed at the application stage of the Agency's occupancy surcharge requirements and procedures. All borrowers will be advised that all occupancy surcharge charges must comply with this Exhibit.

IV. Initial Understanding With Tenant

Tenants moving into projects that are subject to occupancy surcharge requirements should be informed by the borrower/manager of those requirements when the lease and initial tenant certification are signed by the tenant. They should also be apprised at that time of possible surcharge changes based on tenant household income levels.

V. Surcharge Payment Due Dates

The first monthly occupancy surcharge payment and all payments thereafter will have the same due dates as amortized loan installment due dates. Surcharges will be based on tenants in residence on the first of the month prior to the payment due date.

VI. Defining Occupancy Surcharge

Occupancy surcharge is a monthly charge on units in projects where the initial loan was made or insured pursuant to a contract entered into on or after December 15, 1989. The surcharge assessment due will be collected from borrowers by FmHA and set aside to offset any rent increases which may result when the project becomes eligible for a guaranteed equity loan, 20 years from the date the initial loan was made or insured.

The amount of surcharge assessed in the initial year will be $2 per unit, per month, with annual increases of $2 per unit for a 19 year period. At the expiration of the 20 year period, annual increases will stop but the surcharge payment will continue at that established rate for the remaining life of the loan.

The residing tenant will only be required to pay the portion of the surcharge assessment that would be included within 30 percent of their annual adjusted gross income.

Example: (No RA Available for Unit)

Basic Rent for Project—$200 per month

Occupancy Surcharge Assessment for Year One is $2

Net Tenant Contribution (NTC)—$195

Tenant Pays—$200—No Occupancy Surcharge (To pay any portion of the $2 would have put the tenant over 30 percent of their annual adjusted income).

Borrowers will not be required to pay the unpaid portion of the surcharge assessment that exceeds the tenant contribution.

Vacant units will not be subject to surcharge payments but will be subject to annual increases in unit surcharge rates on surcharge anniversary dates.

VII. Adjustments to Occupancy Surcharge Due to Changes In Tenant's Income

A. If a tenant's income increases, and that tenant was not previously paying surcharge at the maximum level assessed to the unit, they may become subject to paying a higher level of surcharge. This amount of surcharge increase is not to exceed the maximum surcharge assessed to the unit by annual increases.

B. If a tenant's income decreases and that decrease will cause the level of surcharge previously paid to exceed 30 percent of their annual adjusted income, the surcharge payments will be decreased accordingly.

C. Annual increases in occupancy surcharges will always be in $2 increments but tenants may qualify to pay any portion of the surcharge unit assessment, rounded up to the nearest $1.

Example: Basic Rent for Project—$200 per month

Occupancy Surcharge Assessment for Year 2 is $4

Tenant NTC—$203

Tenant Pays $200 + $3 Occupancy Surcharge

VIII. Tenants Receiving Rental Assistance (RA)

Tenants receiving RA will always be subject to the maximum occupancy surcharge assessments because their rent contributions will never exceed 30 percent of their annual adjusted gross income.

Example: Basic Rent in Project—$200 per month

Tenant NTC = $150

Year One—Tenant Pays $150 and RA Pays $52 = $202 ($50 Basic Rent + $2 Surcharge)

Year Two—Tenant Pays $150 and RA Pays $54 = $204 ($50 Basic Rent + $4 Surcharge)

If the tenant continues to receive RA, annual increase surcharge assessments will continue to be paid from RA.

IX. Tenants Paying Overage

Tenants paying overage will be subject to maximum surcharge assessments until their rent, utilities and surcharge equals 30 percent of their annual adjusted gross income. The amount of overage tenants pay will reduce by the amount of surcharge assessed to the unit.

Example: Basic Rent for Project is $200 per month

Tenants NTC—$210 (No change in income throughout example)

Year One—Tenant Pays $210 ($200 basic + $2 Surcharge + $8 overage)
Year Two—Tenant Pays $210 ($200 basic + $4 Surcharge + $6 overage)
Year Five—Tenant pays $210 ($200 basic + $10 Surcharge + $0 overage)
Year Six—Tenant Pays $210 ($200 + $10 Surcharge) While the unit surcharge increases to $12, the tenant experienced no surcharge annual increase because, at this point, 30 percent of their annual adjusted gross income will only cover rent, utilities and a $10 occupancy surcharge.

X. Tenants Paying Market Rent

Tenants paying market rent will pay up to the maximum surcharge assessments plus any annual increases until rent, utilities and the surcharge level equals 30 percent of their annual adjusted gross income.

Note: An easy formula to use for market tenants is:
Take the lesser figure of Tenant's 30 Percent or Maximum Contribution (Market plus Surcharge).
Minus Basic Rent.
Minus Occupancy Surcharge unit assessment.
Balance is Overage.

Example: Basic Rent is $200 per month,
Market Rent is $425 per month
Tenant NTC—$430 (no change in income throughout example)
Tenant's maximum contribution is $425 plus surcharge rate
Year One—Tenant Pays $427 ($425 Market Rent + $2 Surcharge) minus basic Rent minus Surcharge = $225 Overage
Year Two—Tenant Pays $429 ($425 Market Rent + $4 Surcharge) minus Basic Rent minus Surcharge = $225 Overage
Year Three—Tenant Pays $430 ($425 Market Rent + $5 Surcharge) minus Basic Rent minus Surcharge = $224 overage
Year Four—Tenant Still Pays $430. Tenant did not pay surcharge annual increase for this year because they are now paying 30 percent of their annual adjusted gross income for rent, utilities and surcharge.

XI. Projects Receiving Rental Assistance From Sources Other Than FmHA

A. Projects subject to occupancy surcharge provisions where tenants are receiving sources of rental assistance other than from FmHA (private project RA, HUD Section 8, State Funded RA, etc.) should be handled on a case-by-case basis and in consultation with the National Office.

B. Whether occupancy surcharge will be paid by rental assistance coming from sources other than FmHA is dependent upon the terms of the contracts from which the funds are expended.

XII. Annual Increases of Occupancy Surcharges

A. The annual surcharge increases will continue for a period of 19 years from the first surcharge anniversary date of the loan in the project that established the surcharge.

B. After the 19 year annual increase period expires, tenants will continue surcharge payments for the remaining life of the loan at the unit rate established on the anniversary date of year 19. The tenant will continue to pay the portion of that unit rate that is within 30 percent of their annual adjusted gross income.

XIII. Surcharge Anniversary Date

The surcharge anniversary date is the effective date for the $2 per unit annual increase assessment. This date will always be established one year from the first surcharge payment due. The first surcharge payment is due at the same time the first amortized loan installment is due which is one month from the Amortized Effective Date (AED).

Example:
Loan Closed—10/12/91
AED Date—11/01/91
1st Amortized Payment Due—12/01/91
1st Surcharge Payment Due—12/01/91
Surcharge Anniversary Date—12/01 for all Subsequent Years
No Further Annual Increases after Year 2011

XIV. Occupancy Surcharge Changes

A. Changes in the amount of surcharge tenants pay due to income changes, the regular tenant recertification process and surcharge anniversary increases will always be handled as separate actions, even though they could be effective on the same date. Examples of change in tenant surcharge payments are:

1. Changes in tenant income during the year can increase or decrease the portion of the assessed surcharge per unit which the tenant must pay.

2. The amount of surcharge paid by the tenant can increase or decrease on the yearly recertification date of Form FmHA "Tenant Certification" if the tenants income has changed.

3. The amount of surcharge paid by the tenant can increase on the surcharge anniversary date.

4. Tenants paying market rent may experience a increase/decrease in the amount of cash they pay for surcharge as a result of the anniversary increase and any income changes.

B. When there are surcharge changes due to income changes and regular recertifications, the current signed tenant certification showing the level of surcharge due will serve as notification of the change.

C. Prior to the project anniversary date, all current Forms FmHA 1944-8, "Tenant Certification" must be reviewed for any changes occurring during the year that would change the status of the tenant related to a surcharge annual increase. Surcharge anniversary reviews must be accomplished by the borrower/manager in a timely manner. The process requires no prior review by FmHA and should be handled in accordance with the following:

1. Prior to the surcharge anniversary date established for the project, all current tenant certifications on file must be reviewed.

2. All tenants in the project will be sent a notification that the surcharge unit assessment has increased by $2, that a review of their income has occurred and notice of any change in their contribution brought about by the surcharge annual increase. Tenants who will actually experience an increase in their Net Tenant Contribution (tenants paying market rent) should be notified at least 30 to 60 days (or in accordance with State or local statutes) prior to the effective date of the increase. These notifications should do the following:

a. Make all tenants aware of the review of their tenant certification and of any changes in the amount of RA they receive, overage they pay or any changes in cash they pay as a result of the review.

b. Offer the tenants an opportunity to meet with management to discuss the changes brought about by the review. (The point of discussion should be based solely on information contained on the tenant certification since the occupancy surcharge requirement is mandated by law).

D. If there are surcharge changes due the tenant as a result of the surcharge anniversary date, it should be manually recorded on the current tenant certification by marking through the old recorded surcharge rate and inserting the new rate.

XV. Responsibility To Pay Occupancy Surcharge

A. Payment of occupancy surcharge must be a viable part of the lease agreement between the tenant and the borrower/manger in accordance with paragraph VIII A 3 of exhibit B of subpart C of part 1930 of this chapter.

B. Nonpayment of occupancy surcharge by the tenant is a violation of that lease and can be used as grounds for eviction.

C. If the borrower/manager has correctly followed the certification procedure as outlined in paragraph VII F of exhibit B of subpart C of part 1930 of this chapter, and there is still no current valid Tenant Certification on file for the tenant at the time of the surcharge anniversary review, and it is determined the fault of the tenant, the tenant will automatically be subject to paying market rent plus the maximum surcharge assessed to the unit. The tenant should be notified of this action in accordance with paragraph VII F 5 b of exhibit B of subpart C of part 1930 of this chapter.

D. The District Director can authorize a waiver of occupancy surcharge while eviction is being actively pursued up to resolution of the eviction action in two instances.

1. When there is not a valid tenant certification on file and it is the fault of the tenant.

2. When the tenant refuses to pay occupancy surcharge.

E. If it is concluded that the lack of current tenant certification is the fault of the borrower/manager, then the borrower/manager (project) must pay market rent plus the maximum occupancy surcharge due for that unit until there is a current certification.

XVI. Subsequent Loans

A. If the initial loan in the project is subject to occupancy surcharge, all other loans in the project will be subject to occupancy surcharge.

B. Subsequent loans, made for any purpose, will not subject a project to paying occupancy surcharge if the initial loan in the project is not subject to occupancy surcharge.

C. If units are added with a subsequent loan and the project is subject to surcharge because of the initial loan, the anniversary

date for the project will remain the same as the one already established by the initial loan. See paragraph XII A for how occupancy surcharge increases apply, and paragraph XII B for period of duration of collection.

1. Tenants moving into the new units will be subject to the level of surcharge assessment already reached for the project by annual increases.

2. The first surcharge payment for the new tenants will begin when their first rent payment for the project is due.

3. On the project anniversary date, all Tenant Certifications for the project will be checked for tenant eligibility for any occupancy surcharge changes.

XVII. Consolidations of Projects Subject to Occupancy Surcharge

A. If none of the loans in any of the projects to be consolidated are subject to the occupancy surcharge provisions, the new consolidated project will not be subject to occupancy surcharge.

B. If one of the projects being consolidated is subject to the occupancy surcharge provisions and one project is not, the following conditions apply:

1. The total units in the project after consolidation will be subject to the occupancy surcharge.

2. The level of the surcharge assessment for the consolidated project will be the same as the assessment for the oldest project already subject to the surcharge. (EXAMPLE: If the project with the oldest surcharge is in its fourth year, the assessment for all units in the new consolidated project will begin at $8 per unit).

3. All tenants in the project, who were not previously subject to surcharge but will now be subject to surcharge because of the consolidation, must be notified 30 to 60 days prior to the first surcharge payment due date.

4. All leases not previously modified to include occupancy surcharge must be modified.

5. The first occupancy surcharge payment for the new consolidated project is due when the first new amortized loan installment is due for the project.

6. The anniversary date established for the project already subject to the occupancy surcharge will be the anniversary date for the new consolidated project.

7. The annual surcharge increase period will expire twenty (20) years from the due date of the first occupancy surcharge payment for the first project that was subject to the assessment prior to consolidation.

C. If all projects being consolidated are subject to the occupancy surcharge provisions, but have different anniversary dates and different twenty (20) year expiration dates, the following conditions apply:

1. The earliest anniversary date of the projects being consolidated will be the anniversary date for the newly consolidated project.

Example:

Project 01–1: Anniversary Date on 10/1/90
Project 02–2: Anniversary Date on 5/1/91
Consolidated Project Anniversary Date is 10/1

2. The beginning level of the surcharge assessment for the consolidated project will be the same as the project with the earliest surcharge payment due date.

Example:

Project 01–1 First Surcharge Payment 10/1/90
Project 02–2 First Surcharge Payment 5/1/91
Date of Consolidation 12/1/91
Project 01–1 is in the 2nd Year of Surcharge
Tenants in project 02–2 will be assessed $4 per unit, effective 1/1/92
All tenants in the consolidated project will be reviewed for the surcharge anniversary increase on 10/1/92

3. The annual surcharge increase period will expire twenty (20) years from the due date of the first occupancy surcharge payment for the newest loan of the projects being consolidated.

XVIII. Surcharge Collection Process

A. Project owners/managers will collect the occupancy surcharge amount from tenants at the same time they collect monthly rents.

B. Project owners/managers will collect information from Forms FmHA 1944–8 and report the amount of surcharge due FmHA on Form FmHA 1944–29, "Project Worksheet for Interest Credit and Rental Assistance," both as a project total and per unit amounts.

C. Project owners will remit the collected amount to FmHA when they remit their monthly loan payments as a part of that payment. The method of RA "netting" will also apply to occupancy surcharges.

D. If occupancy surcharges are not remitted to FmHA in correct amounts and in the specified timely manner, and the project account becomes delinquent as a result, late fees, if applicable, will be assessed to the account.

E. FmHA will remit the collected amount to the Finance Office in accordance with the prescribed collection process in FmHA Instruction 1951–B and of 1951–K of this subpart.

XIX. Tracking Responsibilities

A. The occupancy surcharge monies collected nationwide by FmHA will be deposited in the Rural Housing Insurance Fund (RHIF) and will accrue interest to the account on the total amount of funds collected.

B. FmHA will track occupancy surcharge balances by project through the use of the Automated Multi-Housing Accounting System (AMAS).

C. FmHA will report to borrowers the amount of surcharge collected per project once a year on Form FmHA 1951–54, "Annual Statement of Account."

PART 1965—REAL PROPERTY

31. The authority citation for part 1965 continues to read as follows:

Authority: 7 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Security Servicing for Multiple Housing Loans

§ 1965.65 [Amended]

32. Section 1965.65 is amended by removing paragraph (b)(13).

33. Section 1965.68 is amended by adding a new paragraph (c)(8) to read as follows:

§ 1965.68 Consolidation.

* * * * *

(c) * * *

(8) If any of the loans being consolidated are subject to the occupancy surcharge provisions, they will be handled in accordance with subpart 1951–K, exhibit B.

§ 1965.70 [Amended]

34. Section 1965.70 is amended by removing paragraph (b)(3)(viii) and redesignating paragraphs (b)(3)(ix), (x) and (xi) as paragraphs (b)(3)(viii), (ix) and (x), respectively.

35. Section 1965.89 is amended by revising the introductory text and paragraphs (c) and (d) to read as follows:

§ 1965.89 Equity take-out for loans made after December 15, 1989.

For initial loans made or insured pursuant to contracts entered into on or after December 15, 1989, equity loans may be guaranteed by FmHA after a 20-year period, from the date of the loan, has elapsed. The following steps will be followed when a borrower wishes to receive this equity:

* * * * *

(c) In accordance with the conditions outlined in Exhibit E of this subpart, FmHA will offer to guarantee an equity loan to the borrower which may be repaid from an occupancy surcharge account in accordance with subpart K of part 1951 of this chapter. In addition it must be determined that such an equity loan would not impose undue hardship on tenants or unreasonable cost to the Federal Government. The guaranteed loan will not exceed the lesser of:

(1) The amount determined and calculated in accordance with the equity loan instructions contained in exhibit E of this subpart or (2) 30 percent of the appraised value of the project at the time of the initial loan as shown on the appraisal for that loan.

(d) If the borrower indicates preliminary acceptance of the equity loan, an application will be completed in accordance with subpart E of part 1944 of this chapter and two appraisals will be conducted in the manner outlined in paragraph VI A of exhibit E of this subpart for loans to nonprofit organizations.

* * * * *

Dated: September 19, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 91-30588 Filed 12-26-91; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1436-91]

RIN 1115-AC71

Aliens in Religious Occupations (R Nonimmigrants)

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule promulgates final regulations for implementation of section 209 of the Immigration Act of 1990, Public Law 101-649, November 29, 1990, by providing procedures for admission to the United States of nonimmigrant religious workers under section 101(a)(15)(R) of the Immigration and Nationality Act (Act). This rule will conform Immigration and Naturalization Service (Service) policy on this classification, and clarify for the general public and religious organizations the requirements for classification, admission, and maintenance of status.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: Edward H. Skerrett, Senior Immigration Examiner, or Carla J. Hengerer, Immigration Examiner, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., room 7122, Washington, DC 20536, telephone (202) 514-3946.

SUPPLEMENTARY INFORMATION: On July 24, 1991, at 56 FR 33886, the Immigration and Naturalization Service published a proposed rule in the **Federal Register** and requested comments from interested parties by August 23, 1991. The Service received 27 comments on the proposed rule and considered each of the comments in writing the final rule. The following discussion summarizes the comments, describes how the proposed rule has been altered, and explains the Service's reasons for either making or declining to make changes suggested in the comments.

General Issues

Ten commenters noted that the proposed rule did not specifically allow aliens already lawfully in the United States under other nonimmigrant classifications to change their status to that of nonimmigrant religious worker. The Service initially saw no need to describe this procedure specifically, since section 248 of the Act and 8 CFR part 248 permit such changes of classification generally, with certain exceptions.

To be clear, however, the final rule states that eligible nonimmigrants may change to R-1 classification by filing Form I-129, Petition for Nonimmigrant Worker. Although no petition is required for initial visa issuance, or for initial admission if the alien is visa-exempt, Form I-129 will be used for changes of status, extensions of stay, and changes of employers. A draft of Form I-129 was published at 56 FR 50365 on October 4, 1991. Until this form is available, an alien wishing to change from another nonimmigrant classification to R classification will use Form I-506, Application for Change of Nonimmigrant Status. An alien wishing to extend a stay or change employers will use Form I-539, Application to Extend Time of Temporary Stay.

Two commenters felt that a petition should be required for the initial visa issuance, or for the initial admission of those who are visa-exempt. This would mean that only immigration examiners at Service Centers would make individual R classification decisions. If instead petitions are not required, then applications for R classification can also be decided by immigration inspectors at ports of entry for those who are visa exempt, and by Department of State consular officers for others. Section 214(c)(1) of the Act requires that petitions be filed for aliens seeking H, L, O, or P classification. The Act imposes no such requirement, however, for the R classification. Althrough the Service could impose such a requirement by regulation, it has consulted with the Department of State and has chosen not to do so. Both Department of State and Service personnel have had long experience issuing visas to and admitting religious workers under B-1 nonimmigrant classification, and thus are well-equipped to administer the new R classification.

Definitions

Three commenters felt that the definition of *bona fide nonprofit religious organization in the United States* was overly restrictive. These commenters maintained that, although the statute requires that the organization be nonprofit, there is no requirement that it be tax-exempt. The Service regards this requirement as a fair one, however, and will retain it in the final rule. Whether an organization qualifies for exemption from federal income taxation provides a ready test of that organization's nonprofit status. The Internal Revenue Service (IRS) routinely makes decisions concerning the nonprofit nature of any organization seeking tax-exempt status. Whenever the IRS has already made a determination in this regard, the Service will defer to that deicision. However, the final rule has been amended to provide that, if for any reason an organization has never sought such tax-exempt status from the IRS, the Service will allow the organization to submit to the Service the same documentation as would be required by the IRS.

Seven commenters felt that requiring affiliated organizations to be tax-exempt as religious organizations was too restrictive. These commenters noted that religious organizations are often affiliated with other entities which are tax-exempt for other than religious reasons. The Act does not specifically answer this question. Since this section of the Act pertains to religious workers, however, it is the Service's view that the benefits of this section should be restricted to those in the religious sphere. Therefore, the Service has not changed the final rule in this regard.

Three commenters objected to the proposed requirement that, to be considered affiliated, an organization must be closely related to the religious denomination "in the subordinate or dependent position." These commenters worried that the proposed definition might exclude those faiths not organized as formal hierarchies. Organizations may be closely related to such faiths yet not dependent upon them. The proposed definition might likewise exclude inter-denominational organizations, which may not be subordinate to any denomination. The Service wishes to avoid this result. Accordingly, it has revised the definition of *bona fide organization which is affiliated with the religious denomination* by eliminating the phrase "in a subordinate or dependent position."

Two commenters read the proposed rule to mean that aliens who wish to qualify as ministers must have a baccalaureate degree. The proposed rule imposed no such requirement, however; nor does the final rule. Instead, it must be demonstrated that a recognized religious denomination has authorized the alien to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion.

Six commenters objected to the requirement that, to be considered a

professional religious worker, an alien must have at least a United States baccalaureate degree or its foreign equivalent. These commenters argued first that, because the Act does not specifically require a degree, neither should the regulations. Second, if a degree is required, the regulations should permit an alien religious worker to meet the requirement through some level of experience alone. In contrast, two commenters felt that the proposed definition of *professional capacity* was not restrictive enough and suggested that more than a baccalaureate degree should be required.

The degree requirement is consistent with the rule governing immigrant religious workers, and the Service will retain it in the nonimmigrant rule. This requirement follows from both the Act and its legislative history. The Act itself creates distinct categories: one for those working in a religious vocation or occupation, and another for those working in a religious vocation or occupation in a professional capacity. While the Act does not define the term *professional* in the context of religious workers, it does so at section 203(b)(3)(A) in the context of "skilled workers, professionals, and other workers" who seek immigrant visas. There the Act specifies that a "professional" must have a baccalaureate degree. This strongly suggests that Congress regards a baccalaureate degree as a critical feature distinguishing professionals from nonprofessionals. Therefore, the Service will require an alien seeking nonimmigrant entry as a professional religious worker to have such a degree.

The Act does not require the degree to come from a United States institution, and the Service will recognize an equivalent foreign degree. Nor, however, does the Act refer to gaining baccalaureate degree equivalency through experience, as the legislative history of section 203(b)(2) does with respect to an advanced degree and the Act itself does at section 214(i)(2)(C) with respect to specialty occupations. Therefore, the final rule does not permit baccalaureate degree equivalency through experience.

In any event, the distinction between professional religious workers and other workers in a religious vocation or occupation will have little practical effect. An alien in a religious professional position whose claim to professional status is not based on a degree, but on experience alone or a combination of education and experience, would fall into the category of an alien in a religious vocation or occupation.

One commenter felt that, to qualify as a professional religious worker, an alien should not be required to engage in a traditionally religious profession. The Act itself, however, requires the professional worker to be working "in a professional capacity in a religious vocation or occupation." The final rule reflects this requirement.

The Service also received several comments and questions on the proposed definitions of *religious occupation* and *religious vocation*. These comments ranged from objections that the definitions were overrestrictive to objections that they were overpermissive. While the Act itself does not hint at the definitions of these terms, the legislative history does. The Service based these definitions on H.R. Rep. 101–723, p. 75. The definition of *religious vocation* includes examples taken from the legislative history. Likewise, the definition of *religious occupation* is based on the key admonition in the legislative history that the religious worker provisions "relate to traditional religious functions." As one commenter noted, the exclusion of janitors, maintenance workers, and clerks demonstrates that the occupation must have religious significance. If the job has no religious significance, then the fact that a person is a member of a religious denomination working in a facility run by the denomination would not by itself make that person a religious worker. For example, Catholic nurses do not qualify as religious workers simply by working in a Catholic hospital. Rather, it must be shown that the work relates to a traditional religious function.

Five commenters objected that the proposed definition of *religious vocation*—a calling to religious life "as evidenced by the taking of vows"—was overly restrictive. The Service agrees that the definition should not exclude those in faiths in which "a calling to religious life" may be demonstrated by comparable means other than taking vows. The definition has been revised accordingly.

Two commenters asked that the regulation specifically indicate that religious volunteers need not be compensated. The final rule has been revised to account more clearly for uncompensated volunteers, whose services are engaged but who are not technically employees. Any alien who receives wages or other remuneration for services is an employee. In such a case, the specific organizational unit of the religious organization employing the alien should maintain Form I–9, Employment Eligibility Verification.

Miscellaneous Comments

One commenter asked whether study is permissible for R–2 dependents. The rule only forbids the R–1 alien's dependents to accept employment while in the United States. As with those in other nonimmigrant dependent classifications, such as H–4 and L–2, study is permissible.

Two commenters asked that the B–1 classification continue to be available for short-term religious workers. In the legislative history of this provision at H.R. 101–723, p. 75, the House Committee on the Judiciary noted that "currently, nonimmigrant religious workers are required to pursue business-related visas, such as B, H and L, for admission to the United States." The Committee further noted that "the bill establishes three categories of religious workers" and that "these three categories apply to both immigrants and nonimmigrants alike." This indicates that Congress's purpose in creating the R classification was to incorporate into one classification the various prior means of admitting nonimmigrant religious workers. The B–1 classification should therefore become unnecessary. Both the Service and the Department of State plan regulatory action that will affect the B–1 classification. Until such action is taken, however, the B–1 provisions for religious workers remain in effect.

One commenter expressed concern that ministers might subvert the purpose of the Act after entering the United States by accepting other, non-religious employment. The final rule need not change in this regard, however, since both it and the Act would clearly forbid such employment. The minister of religion must be coming to the United States solely to pursue the vocation of minister. This requirement must be met at the time of the visa application, the application for admission, or the change of nonimmigrant status.

One commenter felt that the rule should be toughened in several ways. This commenter believed that the rule should require bonds, forbid religious workers to change employers, require employers to notify the Service of any change in the religious worker's employment status, and require a longer period between nonimmigrant stays as a religious worker.

The Service does not believe that such measures are necessary. The Act does not require bonds for nonimmigrant religious workers, and to impose such a requirement by regulation would be

unnecessarily cumbersome and severe. The rule permits changes of employers but creates specific requirements that the Service believes are sufficient to prevent abuse. In addition, section 274A of the Act imposes strong employment controls. Finally, although the Service must require an alien to leave the United States between stays as a religious worker, since the Act mandates that such stays shall not exceed five years, one year outside the United States is a sufficient minimum period. That period has previously been used satisfactorily for H–1 and L–1 nonimmigrants, and the Service will also use it for R nonimmigrants.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects in 8 CFR Part 214

Administrative practice and procedure, Aliens, Authority delegation (Government agencies), Employment, Organization and functions (Government agencies), Passports and visas.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a, 8 CFR part 2.

2. Section 214.2 is amended by adding a new paragraph (r) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(r) *Religious workers*—(1) *General.* Under section 101(a)(15)(R) of the Act, an alien who, for at least the two (2) years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit religious organization in the United States, may be admitted temporarily to the United States to carry on the activities of a religious worker for a period not to exceed five (5) years. The alien must be coming to the United States for one of the following purposes: solely to carry on the vocation of a minister of the religious denomination; to work for the religious organization at the request of the organization in a professional capacity; or to work for the organization, or a bona fide organization which is affiliated with the religious denomination, at the request of the organization in a religious vocation or occupation.

(2) *Definitions.* As used in this section:

Bona fide nonprofit religious organization in the United States means an organization exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations, or one that has never sought such exemption but establishes to the satisfaction of the Service that it would be eligible therefor if it had applied for tax exempt status.

Bona fide organization which is affiliated with the religious denomination means an organization which is both closely associated with the religious denomination and exempt from taxation as described in section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

Minister means an individual duly authorized by a recognized religious denomination to conduct religious worship and to perform other duties usually performed by authorized members of the clergy of that religion. In all cases, there must be a reasonable connection between the activities performed and the religious calling of the minister. The term does not include a lay preacher not authorized to perform such duties.

Professional capacity means an activity in a religious vocation or occupation for which the minimum of a United States baccalaureate degree or a foreign equivalent degree is required.

Religious denomination means a religious group or community of believers having some form of ecclesiastical government, a creed or statement of faith, some form of worship, a formal or informal code of doctrine and discipline, religious services and ceremonies, established places of religious worship, and religious congregations, or comparable indicia of a bona fide religious denomination. For the purposes of this definition, an interdenominational religious organization which is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code of 1986 will be treated as a religious denomination.

Religious occupation means an activity which relates to a traditional religious function. Examples of persons in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious conselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons involved solely in the solicitation of donations.

Religious vocation means a calling to religious life evidenced by the demonstration of commitment practiced in the religious denomination, such as the taking of vows. Examples of persons with a religious vocation include, but are not limited to, nuns, monks, and religious brothers and sisters.

(3) *Initial evidence.* An alien seeking classification as a nonimmigrant religious worker shall present to a United States consular officer, or, if visa exempt, to an immigration officer at a United States port of entry, documentation which establishes to the satisfaction of the consular or immigration officer that the alien will be providing services to a bona fide nonprofit religious organization in the United States or to an affiliated religious organization as defined in paragraph (r)(2) of this section, and that the alien meets the criteria to perform such services. If the alien is in the United States in another valid nonimmigrant classification and desires to change nonimmigrant status to classification as a nonimmigrant religious worker, this documentation should be presented with an application for change of status (Form I–129, Petition for a Nonimmigrant Worker). The documentation shall consist of:

(i) Evidence that the organization qualifies as a non-profit organization, in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; and

(ii) A letter from an authorized official of the specific organizational unit of the religious organization which will be employing the alien or engaging the alien's services in the United States. If the alien is to be employed, this letter should come from the organizational unit that will maintain the alien's Form I–9, Employment Eligibility Verification, that is, the organizational unit that is either paying the alien a salary or otherwise remunerating the alien in exchange for services rendered. This letter must establish:

(A) That, if the alien's religious membership was maintained, in whole or in part, outside the United States, the foreign and United States religious organizations belong to the same religious denomination;

(B) That, immediately prior to the application for the nonimmigrant visa or application for admission to the United States, the alien has the required two (2) years of membership in the religious denomination;

(C) As appropriate:

(*1*) That, if the alien is a minister, he or she is authorized to conduct religious worship for that denomination and to perform other duties usually performed by authorized members of the clergy of that denomination, including a detailed description of those duties;

(*2*) That, if the alien is a religious professional, he or she has at least a United States baccalaureate degree or its foreign equivalent and that at least such a degree is required for entry into the religious profession; or

(*3*) That, if the alien is to work in another religious vocation or occupation, he or she is qualified in the religious vocation or occupation. Evidence of such qualifications may include, but need not be limited to, evidence establishing that the alien is a monk, nun, or religious brother or that the type of work to be done relates to a traditional religious function;

(D) The arrangements made, if any, for remuneration for services to be rendered by the alien, including the amount and source of any salary, a description of any other types of remuneration to be received (including housing, food, clothing, and any other benefits to which a monetary value may be affixed), and a statement whether such remuneration shall be in exchange for services rendered;

(E) The name and location of the specific organizational unit of the religious organization for which the alien will be providing services within the United States; and

(F) If the alien is to work in a non-ministerial and nonprofessional capacity for a bona fide organization which is affiliated with a religious denomination, the existence of the affiliation; and

(iii) Any appropriate additional evidence which the examining officer may request relating to the religious organization, the alien, or the affiliated organization. Such additional documentation may include, but need not be limited to, diplomas, degrees, financial statements, or certificates of ordination. No prior petition, labor certification, or prior approval shall be required.

(4) *Initial admission.* The initial admission of a religious worker, spouse, and unmarried children under twenty-one years of age shall not exceed three (3) years. A Form I–94, Arrival-Departure Record, shall be provided to every alien who qualifies for admission as an R nonimmigrant. The Form I–94 for the religious worker shall be endorsed with the name and location of the specific organizational unit of the religious organization for which the alien will be providing services within the United States. The admission symbol for the religious worker shall be R–1; the admission symbol for the worker's spouse and childen shall be R–2.

(5) *Extension of stay.* The organizational unit of the religious organization employing the nonimmigrant religious worker admitted under this section shall use Form I–129, Petition for a Nonimmigrant Worker, along with the appropriate fee, to extend the stay of the worker. The petition shall be filed at the Service Center having jurisdiction over the place of employment. An extension may be authorized for a period of up to two (2) years. The worker's total period of stay may not exceed five (5) years. The petition must be accompanied by a letter from an authorized official of the organizational unit confirming the worker's continuing eligibility for classification as an R–1 nonimmigrant.

(6) *Change of employers.* A different or additional organizational unit of the religious denomination seeking to employ or engage the services of a religious worker admitted under this section shall file Form I–129 with the appropriate fee. The petition shall be filed with the Service Center having jurisdiction over the place of employment. The petition must be accompanied by evidence establishing that the alien will continue to qualify as a religious worker under this section. Any unauthorized change to a new religious organizational unit will constitute a failure to maintain status within the meaning of section 241(a)(1)(C)(i) of the Act.

(7) *Limitation on stay.* An alien who has spent five (5) years in the United States under section 101(a)(15)(R) of the Act may not be readmitted to the United States under the R visa classification unless the alien has resided and been physically present outside the United States for the immediate prior year, except for brief visits for business or pleasure. Such visits do not end the period during which an alien is considered to have resided and been physically present outside the United States, but time spent during such visits does not count toward the requirement of this paragraph.

(8) *Spouse and children.* The religious worker's spouse and unmarried children under twenty-one years of age are entitled to the same nonimmigrant classification and length of stay as the religious worker, if the religious worker will be employed and residing primarily in the United States, and if the spouse and unmarried minor children are accompanying or following to join the religious worker in the United States. Neither the spouse nor any child may accept employment while in the United States in R–2 nonimmigrant status.

Dated: December 16, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91–31000 Filed 12–26–91; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 139

Development of an Airport Signage Plan; Certification and Operations: Land Airports Serving Certain Air Carriers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of requirement for airport signage plan.

SUMMARY: This notice informs all certificated airport owners and operators subject to FAR part 139 that they must have an approved airport signage plan by November 1, 1992.

FOR FURTHER INFORMATION CONTACT: William DeLoach, Office of Airport Safety and Standards, Airport Safety and Operations Division, AAS–300, Federal Aviation Administration, 800 Independence Ave. SW, Washington, DC 20591. Telephone (202)–267–3085.

SUPPLEMENTARY INFORMATION: Federal Aviation Regulations, 14 CFR part 139,

§ 139.205(b)(12) and § 139.213(b)(10) contain the requirement to include in the Airport Certification Manual or the Airport Certification Specifications, as applicable, the following: "A description of, and procedures for maintaining, the marking and lighting systems as required by § 139.311." Additionally, §§ 139.205(b)(26) and § 139.213(b)(16) state that the airport certification manual and airport certification specifications must contain any other item which the Administrator of the Federal Aviation Administration (FAA) finds is necessary in the public interest.

The purpose of this notice is to inform all certificated airport owners and operators that the FAA finds that the inclusion of the airport signage plan in the airport certification manual or the airport certification specifications is in the public interest and requires that airports subject to Federal Aviation Regulation part 139 prepare a signage plan for FAA approval. This plan will detail the type and the location of each sign required by § 139.311.(a) (3), (4), and (5). Any airport subject to FAR part 139 must have an approved airport signage plan no later than November 1, 1992. Additionally, any airport subject to FAR part 139 must have an approved sign plan in order to be eligible for Airport Improvement Program funds for such signing.

Advisory Circular No. 150/5340-18C was adopted July 31, 1991 and contains acceptable standards to satisfy these signage plan requirements.

Authority: 49 U.S.C. App. 1354(a) and 1432; 49 U.S.C. section 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

Issued in Washington, DC, on December 16, 1991.

Raymond T. Uhl,

Deputy Director, Office of Airport Safety and Standards.

[FR Doc. 91-30642 Filed 12-26-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Technology Administration

15 CFR Part 265

Regulations Governing Traffic and Conduct on the Grounds of the National Institute of Standards and Technology, Gaithersburg, MD, and Boulder and Fort Collins, CO

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Final Rule; nomenclature change.

SUMMARY: Pursuant to a reorganization of certain offices within the National Institute of Standards and Technology (hereinafter "NIST"), during which many of NIST's functions and activities have been renamed and reassigned, it became necessary to revise and update NIST's administrative structure. Accordingly, relevant sections of the Code of Federal Regulations must be amended to reflect these changes.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: Philip J. Greene (202) 377-5394.

SUPPLEMENTARY INFORMATION: Because this rulemaking document concerns agency organization and management, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and is not subject to the requirements of that order.

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedures Act (5 U.S.C. 553), or by any other law, no regulatory flexibility analysis has to be or will be prepared for purposes of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)).

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612. This rule does not contain collections of information for purposes of the Paperwork Reduction Act.

List of Subjects in 15 CFR Part 265

Federal buildings and facilities; Traffic regulations.

For the reasons set forth in the Preamble, 15 CFR part 265 is amended as follows:

PART 265 [AMENDED]

1. The authority citation for 15 CFR part 265 continues to read as follows:

Authority: Sec. 9, 31 Stat. 1450, as amended (15 U.S.C. 277). Applies sec. 1, 72 Stat 1711, as amended, (15 U.S.C. 278e(b)).

§ 265.31 [Amended]

2. In 15 CFR 265.31, remove the words "Deputy Director, IBS/Boulder" and add, in their place, the words "Director, NIST Boulder Laboratories."

§ 265.42 [Amended]

3. In 15 CFR 265.42(a), remove the words "Office of Information Activities of the National Institute of Standards and Technology (Chief, Program Information Office, IBS/Boulder for sites in Colorado)" and add, in their place, the words "Public Affairs Division of the National Institute of Standards and Technology (Public Affairs Officer for Boulder for sites in Colorado.)"

§ 265.42 [Amended]

4. In 15 CFR 265.42(b), remove the words "Associate Director for Administration (Executive Officer, IBS/Boulder, for sites in Colorado," and add, in their place, the words "Director of Administration (Executive Office, Boulder, for sites in Colorado)."

Dated: December 19, 1991.

John W. Lyons,

Director, National Institute of Standards and Technology.

[FR Doc. 91-30721 Filed 12-26-91; 8:45 am]

BILLING CODE 3510-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 91F-0059]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Cocoa Butter Substitute

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a synthetic triglyceride mixture as a cocoa butter substitute. This action is in response to a petition filed by Huls America, Inc.

DATES: Effective December 27, 1991; written objections and requests for a hearing by January 27, 1992.

ADDRESSES: Written objections to the Docket Management Branch (HFA-305), Food and Drug Administration, room 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of March 14, 1991 (56 FR 10903), FDA announced that a food additive petition (FAP 7A4025) had been filed by Huls America, Inc., 80 Centennial Ave., P.O. Box 456, Piscataway, NJ 08855-0456, proposing that the food additive regulations be amended to provide for the safe use of synthetic triglyceride

mixture (CAS Reg. No. 85665–33–4), obtained by reacting fatty acids derived from coconut or palm kernel oil with glycerol, as a cocoa butter substitute.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations in 21 CFR part 172 should be amended as set forth below. Because the notice of filing of March 14, 1991, may have been ambiguous, in the amendment set forth below, FDA is clarifying that the food additive may be composed of fatty acids derived solely from coconut oil, fatty acids derived solely from palm kernel oil, or a combination of fatty acids derived from both oils.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before January 27, 1992 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on the objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 376).

2. New § 172.861 is added to subpart I to read as follows:

§ 172.861 Cocoa butter substitute from coconut oil, palm kernel oil, or bath oils.

The food additive, cocoa butter substitute from coconut oil, palm kernel oil, or both oils, may be safely used in food in accordance with the following conditions:

(a) Cocoa butter substitute from coconut oil, palm kernel oil (CAS Reg. No. 85665–33–4), or both oils is a mixture of triglycerides. It is manufactured by esterification of glycerol with food-grade fatty acids (complying with § 172.860) derived from edible coconut oil, edible palm kernel oil, or both oils.

(b) The ingredient meets the following specifications:

Acid number	Not to exceed 0.5.
Saponification number.	220 to 260.
Iodine number	Not to exceed 3.
Melting range	30 to 44 °C.

(c) The ingredient is used or intended for use as follows:

(1) As coating material for sugar, table salt, vitamins, citric acid, succinic acid, and spices; and

(2) In compound coatings, cocoa creams, cocoa-based sweets, toffees, caramel masses, and chewing sweets as defined in § 170.3 (n)(9) and (n)(38) of this chapter, except that the ingredient may not be used in a standardized food unless permitted by the standard of identity.

(d) The ingredient is used in accordance with current good manufacturing practice and in an amount not to exceed that reasonably required to accomplish the intended effect.

Dated: December 17, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91–30923 Filed 12–26–91; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF STATE

Bureau of Economic and Business Affairs

[Public Notice 1542]

22 CFR Part 89

Foreign Prohibitions on Longshore Work by U.S. Nationals

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The final rule contains a revised list, of longshore work by particular activity, of countries where performance of such a particular activity is prohibited by law, regulation or in practice in the country concerned. This list is being issued pursuant to section 258(d) of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1288, as added by the Immigration Act of 1990, Pub. L. 101–649 of November 29, 1990.

DATES: Effective Date: January 1, 1992.

ADDRESSES: For mailing public comments: Office of Maritime and Land Transport (EB/TRA/MA), room 5828, Department of State, Washington, DC 20520–5816.

FOR FURTHER INFORMATION CONTACT: Stephen Miller, Office of Maritime and Land Transport, Department of State, Washington, DC 20520–5816. (202) 647–6961.

SUPPLEMENTARY INFORMATION: Section 258(d)(2) of the Immigration and Nationality Act of 1952, as amended, (hereinafter: the Act) directs the Secretary of State (hereinafter: the Secretary) to "compile and annually maintain a list, of longshore work by particular activity, of countries where performance of such work by crewmembers aboard United States vessels is prohibited by law, regulation or in practice in the country." As announced in the Notice of Proposed Rulemaking dated February 27, 1991, the

Department of State (hereinafter: the Department) is establishing such a list from reports received from United States diplomatic posts abroad concerning relevant laws, regulations and practices of their host countries and from comments received from interested parties. On May 30, 1991, the Department issued a list in the form of an interim final rule with a request for comments (56 FR 24338). Upon publication of the interim final rule, the Department asked the U.S. Embassies in the countries cited to inform their host governments of the rulemaking and its effects and to investigate reports of restrictive practices received in comments to the interim final rule.

Comments From Interested Parties

The Department has received the following comments in response to the interim final rule.

The American Great Lakes Ports (the Ports), which make up the U.S. members of the International Association of Great Lakes Ports, commends the Department for its effort to carry out the letter and intent of section 258 of the Act in a practical manner that takes account of the complexities of the shipping industry. In particular, the Ports agree with the Department's interpretation of geographic scope. The Ports also support listing particular activities in order to apply reciprocity to activities prohibited by other countries, as specified by the Act. In cases where governments are involved in local prohibitions, the Ports believe that the Department should consider whether the government role is similar to that of a commercial entity. Finally, the Ports take the position that the Department's list should govern application of the reciprocity exemption by other agencies.

On behalf of its domestic member companies, the American Iron and Steel Institute expressed strong support for the interim final rule, in particular for the interpretation of the term "in practice", which the Institute believes is fully consistent with section 258 of the Act.

Writing on behalf of the Canadian Shipowners Association, the Canadian-American Company (CANAMCO), fully concurs with the Department's interim final rule. In particular, CANAMCO agrees with the interpretation regarding collective bargaining agreements and general practice.

The Federation of American Controlled Shipping (FACS), whose membership consists of U.S. companies with interests in open registry shipping, believes that the interim final rule has properly construed the longshore provisions of the Act. In particular, FACS concurs with the Department's interpretation of the term "in practice". FACS takes the view that to deny reciprocity to friendly foreign countries whose governments had no role in restrictions in private agreements would be akin to holding the U.S. Government responsible for practices privately negotiated by longshore unions and stevedoring firms in this country. FACS observes that the Act defers to collective bargaining arrangements in U.S. ports which may have the effect of reserving certain activities to longshoremen. From this, FACS concludes that Congress views such private arrangements as both permissible and controlling in the U.S. and that in the same law, Congress would not treat similar arrangements in other countries as improper in the sense that these restrictions would create grounds for denial of a reciprocal exemption. FACS also points to the practical difficulties of monitoring private sector practices throughout the world. Finally, FACS believes that the decision to list only countries that actually have had operative restrictions against U.S. mariners in the past year is reasonable, justifiable and consistent with the spirit and purpose of the reciprocity exemption.

Georgia-Pacific Corporation (G–P) supports the interim final rule as fairly and effectively implementing the spirit and intent of Congress in the Act. G–P agrees with the Department's interpretation regarding collective bargaining agreements and general practice. G–P reports that it owns three foreign-flag ships and depends on other U.S. and foreign-flag carriers for the import and export of raw materials and finished goods. G–P underscores the importance of free and fair international trade to U.S. interests and takes the position that U.S. regulations must not impose unnecessary restrictions or barriers in ocean transportation.

The International Council of Cruise Lines (ICCL) requests an exemption for passenger ships registered in Italy. The ICCL identifies itself as the representative of thirteen foreign-flag passenger cruise lines that carry more than ninety percent of the overnight, deep-water passenger cruise capacity in the North American market. The ICCL recalls that it submitted an earlier statement that the Act does not apply to passenger vessels. Since several ICCL vessels are registered in Italy, which appears on the list published in the interim final rule, ICCL wanted to submit further comments on this particular point. The ICCL submits that the Department should make a finding that Italian law, regulation or practice has not restricted the crews of U.S. passenger vessels from performing longshore work because no U.S.-flag passenger vessel has called on any Italian port in the past year. The ICCL points out that the Department, in its cable to U.S. diplomatic posts, did not make any reference to non-cargo related loading activities of U.S. passenger vessels. The ICCL understands that there is no national policy in Italy regarding longshore work and that each port sets its own policy.

The Lake Carrier's Association supports the Department's finding that Canada does not prohibit longshore work to the crews of U.S.-flag bulk vessels.

The Shippers for Competitive Ocean Transportation (SCOT) has submitted comments as the representative of major companies and associations accounting for more than 60 percent of all U.S. liner exports and for substantial exports by bulk shipping. SCOT supports the Department's interim final rule. In particular, SCOT applauds the effort to determine precise restrictions of each country and to apply reciprocal restrictions only to the degree foreign countries restrict U.S. mariners. SCOT strongly concurs with the Department's interpretation of the geographic scope of foreign restrictions and with the decision not to include countries where no U.S. ship has called in the past year. SCOT urges the Department to clarify whether the restrictions listed apply to different kinds of shipping services. As an example, SCOT notes that in its experience, the restrictions listed for Belgium have not applied to liquid bulk terminals in that country. SCOT observes that the law excludes tankers under the provisions dealing with hazardous materials and environmental protection.

In contrast to industry comments, labor union representatives oppose the Department's interpretation of the Act.

In the view of the International Longshoremen's Association, AFL–CIO and the International Longshoremen and Warehousemen's Union, AFL–CIO (the longshoremen's unions), the Department's standards for reciprocity exception articulated in the interim final rule are not consistent with the guidelines set by Congress in the Act. The longshoremen's unions hold that the Act has the objective of preserving longshore work in the U.S. for U.S. longshoremen. The longshoremen's unions believe that alien longshoremen are doing such work in U.S. ports while U.S. nationals are not able to perform the same activities in foreign countries. The longshoremen's unions express the

concern that the Department's list will enable countries to avail themselves of a reciprocity exemption to which they are not entitled.

Specifically, the longshoremen's unions observe that the statute refers to activities "prohibited by law, regulation or in practice *in* the country. (Emphasis added by the longshoremen's unions.) The longshoremen's unions believe that this construction applies to any private agreement that prohibits U.S. mariners from carrying out longshore work in a foreign country. The longshoremen's unions do not believe that Congress would allow reciprocal exemptions for beneficiaries whose countries did not extend the same privileges to U.S. vessels and mariners.

The longshoremen's unions also take exception to the Department's interpretation of the effect of compensation of local port workers and geographic scope. The longshoremen's unions refer to reports from the International Transport Workers Federation attached to their comments to demonstrate that practices can vary among the ports of a single country. The longshoremen's unions do not believe that the omission of Liberia from the list is warranted because the Department has not made a finding that any longshore activities have been normally performed in Liberia during the past year or during the year preceeding the arrival of a Liberian ship in U.S. coastal waters. The longshoremen's unions further question the terms for the reciprocal treatment of U.S. mariners in Panama. The longshoremen's unions do not believe that Peru should be granted a reciprocal exception because regulations prohibit longshore work by U.S. mariners. Finally, the longshoremen's unions ask about the reasons for the exemptions of Canada, China, Denmark, Germany, Japan, Korea, Portugal and other unspecified countries.

The North American Caucus of the International Transport Workers' Federation (ITF) believes that the Department has misinterpreted the intent of the Act, in particular the term "in practice" as it relates to union contracts, industry agreements, or traditional practices. The ITF takes the position that this section of the Act has the objective of protecting the long-term security of jobs traditionally performed by U.S. longshoremen.

The Transportation Trades Department of the AFL–CIO believes that the Department has misinterpreted the intent of the Act, in particular the term "in practice" as it relates to union contracts, industry agreements, or traditional practices. The AFL–CIO takes the position that this section of the Act has the objective of protecting the long-term security of jobs traditionally performed by U.S. longshoremen.

Representatives Jack Brooks, Howard Berman, William Ford and George Miller submitted a joint statement expressing concerns about the Department's interim final rule and calling upon the Department to modify the final rule. The Congressmen advise that section 258(d) of the Act only provides for a narrow exception from an otherwise broad and deliberate effort to stop foreign mariners from doing longshore work. The Congressmen do not accept the Department's interpretation of the term "in practice" as it relates to private collective bargaining agreements. They note that Congress neither explicitly stated nor implicitly inferred that a private agreement would have to be imposed or approved by the government in order to disqualify a country from receiving a reciprocal exemption. They refer to a colloquy in the October 26, 1990 edition of the Congressional Record between Senators Brock Adams and Edward Kennedy about practices that could constitute a prohibition "in practice."

Definition of Longshore Work

Section 258(b) defines the term "longshore work" as "any activity relating to the loading or unloading of cargo, the operation of cargo-related equipment (whether or not integral to the vessel), and the handling of mooring lines on the dock when the vessel is made fast or let go, in the United States or the coastal waters thereof."

Information developed by the Department indicates that there is no international consensus on what constitutes "longshore work". The laws and regulations of many countries which prohibit crews of U.S. ships from performing longshore work do not provide a definition of the term and do not enumerate particular activities which are covered. Other countries specify particular activities exempt from their restrictions on longshore work. It is possible that activities covered by the Act's definition of "longshore work" may not be viewed in other countries as "longshore work" for the purposes of their laws and regulations. In order to compile as detailed a list as possible, the Department sought information regarding restrictions on particular shipboard activities, e.g. opening of hatches, rigging of ship's gear and handling of lines.

Several comments asked the Department to list practices that apply to different types of shipping services, such as bulk and passenger shipping. The regulations of many countries are not sufficiently detailed to differentiate between practices applying to dry bulk, tanker and liner shipping. Where identified, exceptions from restrictions on longshore work are noted in the list of countries established in accord with section 258(d)(2) of the Act.

Standards for Reciprocity Exception

The Department is listing those countries where restrictions on longshore activities by crewmembers of U.S. ships are imposed or approved by the foreign government on a national basis.

—By law or regulation,
—Through a collective bargaining agreement directly negotiated by the foreign government with other parties, or
—Through restrictions in private collective bargaining agreements imposed or approved by the foreign government.

In view of the sharp differences in opinion prompted by the interim final rule, the Department wishes to review in detail the Act and its legislative history.

Role of Government in Restrictions in Practice

Section 258(d)(1) of the Act sets the general conditions for the reciprocity exemption:

* * * the Attorney General shall permit an alien crewman to perform an activity constituting longshore work if—

(A) The vessel is registered in a *country that by law, regulation, or in practice does not prohibit such activity* by crewmembers aboard United States vessels; and (emphasis added by the Department.)

(B) nationals of *a country (or countries) which by law, regulation, or in practice does not prohibit such activity* by crewmembers aboard United States vessels hold a majority of the ownership interest in the vessel. (Emphasis added by the Department.)

Section 258(d)(3) defines "in practice" as

"an activity normally performed in such country during the one-year period preceding the arrival of such vessel into the United States or coastal waters thereof."

In interpreting the legislation, the Department consulted the conference report, which contains brief references to the exemptions from the general prohibition in section 258 against longshore work by the crews of foreign vessels:

The section provides * * * exemptions * * * for international reciprocity between the United States and *countries that do not prohibit crewmen from performing particular longshore activities* aboard U.S. vessels in their respective ports. (Emphasis added by the Department.)

The conference report further specifies that

"(t)he exception for reciprocity requires a foreign vessel to be registered in a country, and owned by nationals of a country, *each of which does not prohibit by law, regulation or general practice crewmen from performing longshore activities* aboard U.S. vessels in its ports. (Emphasis added by the Department.)

In addition, the colloquy between Senators Kennedy and Adams offers an insight into the intent of Congress:

Mr. ADAMS. Mr. President, concerning the international reciprocity provision in section 203, the bill's section on longshore work, I want to confirm the conference committee's agreement on the degree of protection this provision provides for U.S. longshoremen. It is my understanding that another country's "prohibition in practice" of U.S. or other foreign crewmen performing longshore work is to consist of any effective restriction *imposed or sanctioned by the other country's government.* * * * (emphasis added by the Department.)

Mr. KENNEDY. The Senator is correct.

The Department takes the view that the general conditions set in section 258(d)(1) govern the implementation of the reciprocity exception. The Department agrees with the comment that Congress does not want to grant an exception to crews of countries that do not accord U.S. crews the same treatment. Section 258(d)(1), however, only refers to restrictions in which the government has an active role. The conference report uses the same construction. Moreover, the colloquy explicitly refers to restrictions sanctioned or imposed by a country's government. The Department has therefore concluded that a reasonable interpretation of the Act would only apply to restrictions actively imposed or sanctioned by a foreign government.

Collective Bargaining Agreements

Under the policy of reciprocal treatment established by the Act, collection bargaining agreements duly negotiated under a foreign country's labor law should not affect that country's eligibility for reciprocal exemption unless the country's government imposes or sanctions the agreements. The mere existence of agreements restricting longshore activities by crewmen does not mean that the government supports or requires such restrictions. As in the U.S., the labor laws of many other countries guarantee the right of collective bargaining but do not dictate the terms of collective bargaining agreements. In each case, the Department examined the extent of government intervention in the collective bargaining process.

The Department agrees with the comment that section 258(d)(3) recognizes collective bargaining activities as a distinct sphere of activity not subject to provisions of the Act. In this connection, the Department makes note of a statement by Senator Kennedy on this matter in the colloquy cited earlier:

[This section] does not extent (sic) into the area of labor law and would not disturb any U.S. longshore collective bargaining agreements that reserve work for U.S. workers.

Geographic Scope

The Department is only listing countries where restrictions generally prevail throughout the country. The conference report establishes "general practice" as a test for reciprocity exemption. Some parties submitting comments claim no knowledge of discussions in Congress to examine each region of countries contiguous to the United States rather than considering activities on a nationwide basis. Even if Congress rejected such a proposal, these parties believe that the legislation requires a separate examination of the practices in each region of a foreign country. The Department notes that Administration representatives from the Departments of State and Transportation took an active part in discussions with the conferees about this proposal and made clear that the Administration firmly rejected such an approach. Comments to the interim final rule have not changed the Department's views.

Commercial Practice

Several comments submitted in response to the notice of proposed rulemaking observed that carriers may use local longshore workers as a matter of established commercial practice. The Department agrees that carriers may voluntarily employ local workers for reasons other than governmentally imposed or approved constraints. In the absence of evidence of restrictive laws, regulations or practices, the Department presumes that the choice to use local longshoremen results from purely voluntary commercial decisions.

Compensation of Port Workers

The Department is not including as restrictions requirements to compensate local workers for wages foregone if crewmembers perform longshore work unless the compensation does not reflect the ordinary market wages for such work.

Status of Individual Countries

Some parties raised questions about the status of individual countries. The Department made its finding on Liberia after determining that no U.S. ships have called in Liberian ports during the past year and consequently have not been subject to any restrictions on longshore work. After further consultations with the Panamanian Government, the Department has not found any prohibition against longshore work by U.S. crewmembers in law, regulation or in practice. Therefore, the Department is not placing Panama on the list. The finding on Peru is based on reports from the U.S. Embassy in Lima on discussions with U.S. carriers as well as Peruvian government officials. These sources confirm that Peru no longer prevents U.S. mariners from doing longshore work.

Some comments contained allegations about restrictions in several other countries. Some of the countries (Belgium, Brazil, Italy and Turkey) are already included on the list. Further investigation into the allegations about Japan uncovered regulations that prohibit the crews of U.S. ships from doing longshore work. The Department also determined that Germany requires U.S. mariners to have a work permit in order to perform certain on-shore longshore activities. Germany and Japan have consequently been added to the list. The Department also investigated reports of restrictive collective bargaining agreements in Denmark and has reconfirmed that the Danish Government has not approved or imposed these restrictions. Therefore, Denmark is not included in the list.

Information collected after publication of the interim final rule indicates that Algeria prohibits U.S. mariners from performing longshore work. That country has been added to the list. The Department has incorporated changes into the final rule concerning prohibitions in Italy, Spain, Taiwan and Trinidad and Tobago to reflect more precisely the laws, regulations, and practices of these countries and regions.

In its comments, one party questioned whether Italy has a national policy on longshore work. The U.S. Embassy in Rome reports that Article 110 of the Navigation Code governs longshore work by foreign mariners. The law makes no distinction between types of ships.

List of Subjects in 22 CFR Part 89

Aliens, Crewmembers, Immigration, Labor, Longshore Work.

For the reasons set out in the preamble, 22 CFR chapter I is amended as follows.

PART 89—PROHIBITIONS ON LONGSHORE WORK BY U.S. NATIONALS

Part 89 is amended by revising § 89.1 to read as follows:

§ 89.1 Prohibitions on Longshore work by U.S. nationals; listing by country.

The Secretary of State has determined that, in the following countries, longshore work by crewmembers aboard United States vessels is prohibited by law, regulation, or in practice, with respect to the particular activities noted:

Algeria

(a) All longshore activities.

Argentina

(a) Loading and discharge of cargo.

Australia

(a) Handling of cargo or ballast in connection with the loading or discharge of a ship, including rigging of ship's gear, unless there is insufficient shore labor.

(b) Exceptions: Operation of self discharging equipment and other automatic loading/unloading mechanisms.

Belgium

(a) Cargo loading and discharge.

(b) Exception: Operation of cargo-related machinery on board the ship.

Belize

(a) Loading and unloading cargo vessels and handling of containers.

(b) Exception: Operation of shipboard cranes to load and offload containers.

Brazil

(a) Movement of cargo.

(b) Lashing or unlashing of containers.

(c) Operation of cargo related equipment, whether or not on board the ship.

(d) Activities performed by cargo checkers, tally clerks, watchmen, and coopers.

Burma

(a) Loading and discharge of cargo from and in any sea-going vessels coming to any dock, wharf, quay, stage, jetty or pier.

(b) Handling of mooring lines.

(c) Exceptions: Shipboard activities including opening hatches and rigging ship's gear; loading or discharge of cargo when the equipment or cargoes require special handling; and loading or discharge of other cargoes, by special agreement with port authorities.

Chile

(a) Any and all functions relating to the loading and unloading of cargo and other tasks appropriate to a port, whether on board boats and ships in the port or in the dock area, including the operation of cargo-related equipment, whether or not integral to the vessel, including hatches and rigging of ship's gear.

(b) Exceptions:

(1) Placement and removal of mooring ropes from dock bitts and operation of the capstans aboard the vessel, when under the control of the harbor pilot; and

(2) Doing a vessel's mess and purveying alongside the ship with the provisions, loading and placement of the provisions in the ship's larder or stores.

China, Peoples Republic of

(a) All longshore activities.

Columbia

(a) All activities related to the loading and discharge of cargo, including operation of cargo-related equipment integral to the vessel.

Congo

(a) All longshore activities.

Costa Rica

(a) Operation of loading and unloading equipment affixed to the pier.

Cote d'Ivoire

(a) All longshore activities.

Egypt

(a) Cargo loading and unloading activities not on board the ship.

El Salvador

(a) Port operations, including the loading and discharge of cargo, the operation of equipment, whether on the ship or not, and the handling of lines.

France

(a) All loading and unloading of ocean-going ships.

(b) Exception: Movement of personal belongings and machinery belonging to the ship.

Germany

(a) All longshore activities on shore without a labor permit.

Guatemala

(a) All port operations except for the opening of hatches and entrances to ship storage areas.

Guinea

(a) All longshore activities.

Honduras

(a) All longshore activities, including loading and discharge of cargo, handling of containers, operation of cranes, hoisting machinery and roll-on/roll-off equipment.

(b) Exception: Handling of toxic or hazardous materials, with clearances obtained through the national port authority prior to entry into port.

India

(a) All on-board activities relating to loading and discharge of cargo and operation of cargo-related equipment, including rigging of derricks, and opening and closing of hatches.

(b) All movement of cargo on shore.

(c) Berthing vessels and handling of mooring lines on dock when the vessel is made fast or let go.

Indonesia

(a) All longshore activities, including opening of hatches, rigging of ship's gear and line handling, as long as there are Indonesian longshoremen available.

(b) Exceptions: Activities for which local workers lack the requisite skills; in an emergency situation, duties ordinarily performed by longshoremen; and loading and discharge of hazardous chemicals at industrial ports if no Indonesian workers are available for the job.

Israel

(a) All longshore activities, including loading and unloading of cargo, operation of cargo-related equipment, and handling of mooring lines.

(b) Exception: Jobs related to the maintenance of the ship itself.

Italy

(a) All longshore activities, including operation of on board equipment and the loading and discharge of new automobiles.

(d) Exceptions:

(1) Operation of automated loading and discharge equipment on board the vessel and associated manual activities, including loading and discharging containers from container vessels manually or with automatic or semi-automatic spreaders,

(2) Operation and movement of fixed or mobile mechanical equipment owned or leased by port companies and used for operations.

(3) Ancillary activities connected with documenting goods,

(4) Restoration of packaging,

(5) All activities, including moving goods, carried out within areas operated under a concession granted by the port authority,

(6) Activities strictly connected with the operation and security of navigation, or otherwise within the competence of the crew,

(7) Handling of the lifts on ferries,

(8) Preparation of on board derricks, winches and cranes,

(9) Opening and closing of hatches,

(10) Loading and discharge operations related to barges from LASH vessels,

(11) Installation of bulkheads to secure cargo,

(12) Lashing and unlashing operations, and

(13) Securing of cargo.

Jamaica

(a) Activities normally carried out by stevedores, linesmen, gangmen or longshoremen, including:

(1) All on-shore activities dealing with the handling and placement of cargo;

(2) All movement of cargo from or onto ships whether by gangplank or crane;

(3) All stacking and slinging of pallets within the ship's cargo holds;

(4) Mooring and unmooring of ships, including handling of mooring lines aboard ships; and

(5) Any other activity involving the discharge of cargo into Jamaica.

(b) All activities associated with the discharge of grain and loading of grain products, with the exception of handling of on-board machinery to keep the ship righted.

(c) Exception: Direction of supervisors by the ship's officers only insofar as necessary to identify which cargo is to be palletized, shifted, or off-loaded.

Kenya

(a) All longshore activities.

Madagascar

(a) All longshore activities.

Mauritania

(a) All longshore activities.
(b) Exception: Supervision by the vessel's master or loadmaster.

Morocco

(a) Handling of any product, crates, boxes, bales or containers destined for unloading.
(b) Exception: Any shipboard activities not relating to loading or discharge operations and not having any commercial character, including opening hatches, rigging of ship's gear and line handling.

Mozambique

(a) All longshore activities.

Namibia

(a) Port services and cargo loading and discharge.
(b) Exception: Handling of cargo only while it remains on the vessel.

Oman

(a) Longshore work without a labor permit, including loading or discharge of cargo, handling of containers or any other activity not related to a crewman's job on the ship or to basic ship repair.
(b) Exceptions: Opening of hatches, rigging of the ship's gear and handling of lines aboard ship.

Pakistan

(a) All longshore activities.
(b) Exceptions: Shipboard activities other than opening of hatches; with prior approval from Ministry of Communications officials, loading or discharge of special cargoes with on-board equipment in cases where dockside equipment operated by longshoremen cannot safely moved the cargoes.

Philippines

(a) All longshore activities.

Portugal

(a) All operations associated with loading or unloading cargo and complementary operations within the port area, including lashing.
(b) Expections:
(1) Opening and closing of hatches;
(2) Rigging of ship's gear;
(3) Handling of lines;
(4) Military vessels or the operation of military material in areas under military jurisdiction;
(5) The supply of bulk operating fuels and lubricating oils to a ship;
(6) The movement of spare parts, supplies, ship's stores, fuels and lubricants when the quantities to be moved are less than three tons per vessels;
(7) The loading, unloading and transfer of fuels and bulk liquid petroleum products;
(8) The loading, unloading and transfer of chemical products whose characteristics require special handling;
(9) The loading, unloading and packing of fresh, refrigerated or frozen fish from a fishing vessel, except when such cargo is listed on the manifest; and
(10) The movement of goods and materials within naval construction and repair yards or petroleum terminals.

Romania

(a) All longshore activities not on board the ship.

St Lucia

(a) All longshore activities.

Sierra Leone

(a) All longshore activities on shore.

South Africa

(a) Cargo handling without a license issued by the port authority.

Spain

(a) Longshore operations, including any loading, offloading, stowage and transfer of goods within port intended for maritime transport by ship.
(b) Exceptions include:
(1) Handling of goods, material, and machinery belonging to the port authorities;
(2) Material of the Ministry of Defense unless operations are carried out by a stowage company;
(3) Mail loading and offloading;
(4) Private vehicles offloaded by owners or drivers and complementary grip tasks carried out by ship's crew;
(5) Offloading, transport to storage and complementary work of fresh fish from ships of less than 100 gross tons capacity or those above this size under special contract when carried out by the crew;
(6) Operations carried out within the port directly related to processing plants, industrial zones or canning factories, as long as they are not carried out by a stowage company;
(7) Handling of personal belongings of passengers and crewmembers;
(8) Loading and offloading of maintenance goods as long as it does not require hiring additional personnel or operations carried out by pipelines;
(9) The use of cranes and tractor devices not assigned to port operations as long as they are used by their regular personnel; and
(10) Driving, coupling and coupling tractor devices to load and unload trailers as long as transport is carried out without interruption from outside of the port area until their loading, or from the ship to the outside of the port area.

Sri Lanka

(a) All longshore activities.
(b) Exceptions: With a waiver granted by the Minister of Ports and Shipping upon application through the ports authority, handling of long lines of ships awaiting unloading and other activities under exceptional circumstances.

Taiwan

(a) Loading and discharge activities, including opening of hatches and rigging of ship's gear.
(b) Handling of mooring lines on the dock for all vessels.
(c) Exceptions: Loading and discharge of cargo if the longshoremen cannot handle the cranes of a particular ship; and operation of automatic hatch opening equipment that longshoremen are unable to operate.

Thailand

(a) All longshore activities, including opening of hatches, riggings ship's gear and line handling once the ship has berthed.
(b) Exception: Operation of onboard cargo machinery integral to the ship.

Togo

(a) Handling of mooring lines on the dock.

Trinidad and Tobago

(a) All longshore activities, including loading and discharge of cargo; lashing and unlashing of containers; operation of cargo-related equipment, unless the required skill is unavailable at port; and activities normally performed by cargo checkers, tally clerks and watchmen.

Tunisia

(a) All longshore or dock activities, including the operation of on-board hoists.

Turkey

(a) Work done on the pier, including mooring, cargo handling, crane operations and ground vehicle transportation.
(b) Exceptions: activities on board vessels to assist in loading and discharge of cargo.

Uruguay

(a) All longshore activities, including the opening of hatches, rigging of ship's gear and line handling.
(b) Exception: loading and discharge of cargo where Uruguayan workers cannot operate on board loading cranes.

Yemen

(a) All longshore activities.

(8 U.S.C. 1288, Pub. L. 010-649, 104 Stat. 4878)

Eugene J. McAllister,

Assistant Secretary, Economic and Business Affairs, Department of State.

[FR Doc. 91-30951 Filed 12-26-91; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 201, 203, and 234

[Docket No. N-91-3348; FR-3188-N-01]

Loan and Mortgage Insurance; Changes to the Maximum Loan and Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of revisions to FHA maximum loan and mortgage limits for high-cost areas.

SUMMARY: This Notice amends the list of areas eligible for "high-cost" loan and

mortgage limits under certain of HUD's insuring authorities under the National Housing Act (NHA) by increasing the mortgage limits for Caroline County, Virginia; Kent County, Maryland; Pinellas County, Florida; Hamilton County, Tennessee; Livingston County, Michigan; Jefferson County, Colorado; Douglas County, Nevada; the Bremerton, Takoma, Spokane and Olympia, Washington MSAs; and Mason and Skagit Counties, Washington; and by adding to the list of high cost areas: Penobscot County, Maine; Carroll County, New Hampshire; Pike County, Pennsylvania; Lake, Charlotte and Flagler Counties, Florida; Whitfield County, Georgia; Cowlitz, Chelan and Douglas Counties, Washington.

This Notice also corrects several errors and omissions that appeared in the notice of revisions published in the **Federal Register** on August 1, 1991 (56 FR 36980). The corrections include reflecting that Salem County, New Jersey and Cecil County, Maryland have the same limits as the rest of the Wilmington, DE–NJ–MD PMSA; reflecting that York County, South Carolina has the same limits as the rest of the Charlotte-Gastonia-Rock Hill, NC–SC MSA, and that Lapeer County, Michigan has the same limits as the rest of the Detroit, MI PMSA. This notice also reflects correct limits for Manatee County, Florida; Santa Cruz County, Arizona; and Clackamas and Washington Counties, Oregon.

Loan and mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: For single family: Morris Carter, Director, Single Family Development Division, room 9272; telephone (202) 708–2700. For manufactured homes: Robert J. Coyle, Director, title I Insurance Division, room 9158; telephone (202) 708–2880; 451 Seventh Street, SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act, 12 U.S.C. 1703 and 1709 *et. seq.*, authorizes HUD to insure loans and mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and manufactured homes and lots in combination. The NHA, as amended by the Housing and Community Development Amendments of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum loan and mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, section 214 of the NHA provides for special high-cost limits for insured mortgages in Alaska, Guam, Hawaii, and the Virgin Islands.

The last comprehensive list of high-cost areas was published on August 1, 1991 (56 FR 36980) listing all areas eligible for "high-cost" loan and mortgage limits under certain of HUD's insuring authorities under the National Housing Act, and the applicable limits for each area.

This Document

Today's document increases high-cost loan and mortgage limits for Caroline County, Virginia; Kent County, Maryland; Pinellas County, Florida; Hamilton County, Tennessee; Livingston County, Michigan; Jefferson County, Colorado; Douglas County, Nevada; the Bremerton, Takoma, Spokane and Olympia, Washington MSAs; and Mason and Skagit Counties, Washington; and adds high-cost loan and mortgage limits for Penobscot County, Maine; Carroll County, New Hampshire; Pike County, Pennsylvania; Lake, Charlotte and Flagler Counties, Florida; Whitfield County, Georgia; Cowlitz, Chelan and Douglas Counties, Washington.

This document also corrects several errors and omissions appearing in the notice of revisions published in the **Federal Register** on August 1, 1991 (56 FR 36980). The corrections include reflecting that Salem County, New Jersey and Cecil County, Maryland have the same limits as the rest of the Wilmington, DE-NJ-MD PMSA; reflecting that York County, South Carolina has the same limits as the rest of the Charlotte-Gastonia-Rock Hill, NC-SC MSA, and that Lapeer County, Michigan has the same limits as the rest of the Detroit, MI PMSA. This notice also reflects the correct limits for Manatee County, Florida; Santa Cruz County, Arizona; and Clackamas and Washington Counties, Oregon.

These amendments appear in two parts. Part I explains how the high-cost limits are calculated for manufactured home and lot loans insured under title I of the National Housing Act. Part II lists each high-cost area, with applicable limits for single family residences (including condominiums) insured under sections 203(b), 234(c) and 214 of the National Housing Act.

List of Subjects

24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Loan programs—housing and community development, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 203

Hawaiian Natives, Home Improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the Department publishes the revised dollar limitations as follows:

National Housing Act High Cost Loan and Mortgage Limits

Part I: Method of Computing Limits Under Title I, National Housing Act

A. *Section 2(b)(1)(D). Combination manufactured home and lot (excluding Alaska, Guam, Hawaii, and the Virgin Islands):* To determine the high-cost limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one family" column of Part II of this list by .80. For example, Penobscot County, ME has a one-family limit of $77,900. The combination home and lot loan limit is $77,900 x .80, or $62,320.

B. *Section 2 (b)(1)(E): Lot only (excluding Alaska, Guam, Hawaii and the Virgin Islands):* To determine the high-cost limit for a lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .20. For example, Penobscot County, ME has a one-family limit of $77,900. The lot-only loan limit is $77,900 x .20, or $15,580.

C. *Section 2(b)(2). Alaska, Guam, and Hawaii limits:* The maximum dollar limits for Alaska, Guam and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1).

Accordingly, the dollar limits for Alaska, Guam, and Hawaii are as follows:

1. For manufactured homes: $56,700. ($40,500 X 140%).

2. For combination manufactured homes and lots: $75,600. ($54,000 X 140%).

3. For lots only: $18,900. ($13,500 X 140%).

D. *Limits in the Virgin Islands:* For the Virgin Islands, the maximum mortgage amount for a one-family residence has

been increased under section 203(b) to 185% of the basic mortgage limit. Accordingly, the combination home and lot limit is $99,900 ($54,000 x 185%). The lot limit is $24,975 ($13,500 x 185%).

Part II. Updating of FHA Sections 203(b), 234(c) and 214 Area-Wide Mortgage Limits

REGION I

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
HUD Field Office—Bangor:				
Penobscot County, ME	$77,900	$87,700	$106,600	$123,000
HUD Field Office—Manchester:				
Carroll County, NH	123,000	138,550	168,350	194,250

REGION II

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
HUD Field Office—Camden:				
Wilmington, DE-NJ-MD PMSA (Part) Salem County, NJ	$100,600	$113,300	$137,650	$158,800

REGION III

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
HUD Field Office—Philadelphia:				
Pike County, PA	$97,850	$110,200	$133,900	$154,500
HUD Field Office—Baltimore:				
Wilmington, DE-NJ-MD PMSA (Part) Cecil County, MD	100,600	113,300	137,650	158,800
Kent County, MD	104,500	117,700	143,000	165,000
HUD Field Office—Richmond:				
Caroline County, VA	71,250	80,250	97,500	112,500

REGION IV

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
HUD Field Office—Atlanta:				
Whitfield County, GA	$70,850	$79,800	$96,950	$111,900
HUD Field Office—Columbia:				
Charlotte-Gastonia-Rock Hill, NC-SC MSA (Part)				
York County, SC	97,950	110,300	134,000	154,650
HUD Field Office—Orlando:				
Lake County, FL	71,500	80,550	97,850	112,950
HUD Field Office—Jacksonville:				
Flagler County, FL	83,600	94,150	114,400	132,000
HUD Field Office—Coral Gables:				
Charlotte County, FL	73,050	82,250	99,950	115,350
HUD Field Office—Tampa:				
Pinellas County, FL	91,850	103,450	125,700	145,050
Bradenton, FL MSA				
Manatee County	93,950	105,850	128,600	148,400
HUD Field Office—Knoxville:				
Hamilton County, TN	82,650	93,050	113,100	130,500

REGION V

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
HUD Field Office—Detroit:				
Livingston County, MI	$98,400	$110,850	$134,650	$155,400
HUD Field Office—Flint:				
Detroit, MI PMSA				
Lapeer County	85,150	95,900	116,500	134,400

REGION VIII

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
HUD Field Office—Denver				
Jefferson County, CO	$109,050	$122,800	$149,200	$172,000

REGION IX

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
HUD Field Office—Tucson:				
Santa Cruz County, AZ	$69,350	$78,100	$94,900	$109,500
HUD Field Office—Reno:				
Douglas County, NV	101,300	114,100	138,600	159,950

REGION X

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
HUD Field Office—Seattle:				
Chelan County, WA	$77,900	$87,700	$106,600	$123,000
Douglas County, WA	83,600	94,150	114,400	132,000
Bremerton, WA MSA				
Kitsap County	106,400	119,800	145,600	168,000
Mason County, WA	79,100	89,100	108,250	124,950
Olympia, WA MSA				
Thurston County	85,450	96,200	116,900	134,900
Skagit County, WA	97,100	109,400	132,900	153,350
Takoma, WA PMSA				
Pierce County	102,850	115,850	140,750	162,450
Other Areas:				
Cowlitz County	69,350	78,100	94,900	109,500
HUD Field Office—Spokane:				
Spokane, WA MSA				
Spokane County	79,750	89,850	109,150	125,950
HUD Field Office—Portland:				
Clackamas County, OR	113,050	127,300	154,700	178,500
Washington County, OR	106,600	120,050	145,850	168,300

Dated: December 19, 1991.

Arthur J. Hill,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91-30963 Filed 12-26-91; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8385]

RIN 1545-AP75

Allocations Attributable to Partnership Nonrecourse Liabilities

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the allocation among partners of certain losses or deductions and certain income or gain attributable to partnership nonrecourse liabilities. The final regulations affect partnerships and their partners, and are necessary to provide them with guidance needed to comply with the applicable tax law.

EFFECTIVE DATE: These regulations are effective December 28, 1991, and generally apply to partnership taxable years beginning on or after December 28, 1991.

FOR FURTHER INFORMATION CONTACT: Susan Pace Hamill, 202-377-9470 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1990 (44 U.S.C. 3504(h)) under control number 1545-1090. The estimated annual burden per respondent varies from 3 minutes to 8 minutes, depending on individual circumstances, with an estimated average of 5 minutes.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224 and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Introduction

This document adds new regulation § 1.704–2 to the Income Tax Regulations (26 CFR part 1) under section 704(b) of the Internal Revenue Code of 1986 and removes existing § 1.704–1(b)(4)(iv) and § 1.704–1T(b)(4)(iv).

Background

On December 30, 1988, temporary regulations (TD 8237) relating to allocations attributable to nonrecourse liabilities were published in the **Federal Register**. A notice of proposed rulemaking (PS–229–84) cross referencing the temporary regulations was published in the **Federal Register** the same day. On November 21, 1989, amendments to the temporary regulations (TD 8274) were published. Written comments were received and a public hearing was held on October 30, 1991. After consideration of the comments, the proposed regulations are adopted as simplified and revised by this Treasury decision, and the corresponding temporary regulations are removed.

Explanation of Provisions

I. Introduction

Under section 704(b) of the Internal Revenue Code and the regulations thereunder, allocations of a partnership's income and deductions must have substantial economic effect to be valid for federal income tax purposes—that is, they must affect, in a substantial way, the economic stakes of the partners in the partnership apart from the tax consequences. The substantial economic effect portion of the section 704(b) regulation (§ 1.704–1 (b)(1) and (b)(2)) contains a number of requirements designed to ensure that partners who are allocated losses bear the economic burden associated with those losses, and partners who are allocated income receive the economic benefit associated with that income. Allocations that do not have substantial economic effect under the tests in the section 704(b) regulations are reallocated according to the partners' interests in the partnership.

Nonrecourse liabilities are liabilities for which no partner is personally liable. Accordingly, allocations of deductions attributable to partnership nonrecourse liabilities (nonrecourse deductions) cannot have substantial economic effect because the nonrecourse lender, rather than the partners, ultimately bears any economic loss attributable to those deductions. Similarly, allocations of the gain that would be realized if the property securing the debt were surrendered for no consideration other than full satisfaction of the liability cannot have substantial economic effect because these allocations merely offset the nonrecourse deductions.

The final regulations provide rules that: (1) Determine when a partnership has nonrecourse deductions; (2) provide a safe harbor, including a minimum gain chargeback requirement, under which allocations of nonrecourse deductions are deemed to be in accordance with the partners' interests in the partnership; and (3) determine when a partnership must allocate income to the partners who were previously allocated nonrecourse deductions, pursuant to the minimum gain chargeback requirement.

II. Explanation of the Rules Common to the Temporary and Final Regulations

A. Minimum Gain

Allocations attributable to partnership nonrecourse liabilities are based on the concept of minimum gain. The amount of minimum gain with respect to a nonrecourse liability is the gain the partnership would realize if the property securing the liability were disposed of for no consideration other than relief from the liability. Consequently, minimum gain exists to the extent the amount of the liability exceeds the property's adjusted tax basis. The amount of minimum gain increases as the difference between the property's adjusted tax basis and the amount of the liability gets larger (for example as depreciation deductions are taken); minimum gain decreases as the difference between the property's adjusted tax basis and the amount of the liability gets smaller (for example if the property subject to the debt is disposed of or if the liability is paid).

B. Nonrecourse Deductions

In any taxable year, the amount of a partnership's nonrecourse deductions equals the net increase in the partnership's minimum gain reduced by any distributions of nonrecourse debt proceeds that are allocable to an increase in partnership minimum gain. A net increase or decrease in the partnership's minimum gain is an aggregate figure that is determined by comparing the current year's minimum gain with the prior year's minimum gain. If the partnership has a net increase in minimum gain, partnership deductions are generally treated as nonrecourse deductions to the extent of the net increase. Nonrecourse deductions must be allocated in accordance with the partners' interests in the partnership. The regulations provide a safe harbor under which an allocation of nonrecourse deductions is deemed to be in accordance with the partners' interests in the partnership. If the partnership has a net decrease in minimum gain, generally the minimum gain chargeback rules require income to be allocated to the partners who were previously allocated nonrecourse deductions or received distributions attributable to nonrecourse debt proceeds.

The partnership's nonrecourse deductions consist first of depreciation or cost recovery deductions from property subject to nonrecourse debt. If there are not enough depreciation or cost recovery deductions to cover the partnership's nonrecourse deductions, a pro rata portion of the partnership's other deductions are treated as nonrecourse deductions. If the amount of nonrecourse deductions exceeds these other items, then the excess is treated as an increase in partnership minimum gain (to be aggregated with any other minimum gain increases and decreases) for the next taxable year.

C. Allocations of Nonrecourse Deductions and Minimum Gain Chargebacks

Allocations of nonrecourse deductions are deemed to be in accordance with the partners' interests in the partnership if certain requirements are met. First, the partnership must meet all of the requirements of the economic effect rules under § 1.704–1(b) of the regulations. (The final regulations clarify the temporary regulations by explicitly listing the requirement that partners agree to a qualified income offset or an unconditional deficit restoration obligation with the other economic effect requirements that must be satisfied.) Second, the partnership must allocate the nonrecourse deductions in a manner that is reasonably consistent with the allocation that has substantial economic effect of another significant item attributable to property secured by nonrecourse debt (the reasonable consistency requirement). Finally, the partnership agreement must also contain a minimum gain chargeback provision that complies with the regulations. Part III below describes the minimum gain chargeback requirement in the temporary regulations, and Part IV describes the minimum gain chargeback requirement in the final regulations.

The reasonable consistency requirement governs the ratio in which the partners are permitted to share the nonrecourse deductions. The ratio for sharing nonrecourse deductions must correspond to other allocations that are related to the nonrecourse deductions and that have substantial economic

effect. The examples illustrate situations that meet the reasonable consistency requirement where the nonrecourse deductions are allocated according to how the partners share losses or profits, or any ratio between those two figures.

Generally, when a partnership has a net decrease in minimum gain, there is a requirement to charge back minimum gain (the minimum gain chargeback requirement) (see parts III and IV below). The minimum gain chargeback requirement ensures that the nonrecourse deductions are replaced with income allocations at the appropriate time. The partnership's income used to satisfy the minimum gain chargeback requirement first consists of gains from the sale of property subject to nonrecourse debt. Any remaining minimum gain chargeback requirement is satisfied with a pro rata portion of the partnership's other items of income and gain (except gain from the sale of property subject to partner nonrecourse debt, which is treated separately). If there are not enough income items to satisfy the minimum gain chargeback requirement, the excess is carried over as a minimum gain chargeback requirement to succeeding taxable years until there is enough income to satisfy the minimum gain chargeback requirement. In certain circumstances, the temporary and the final regulations permit deferral of the minimum gain chargeback requirement until the occurrence of a subsequent event that triggers the chargeback. The temporary and final regulations also do not require the chargeback of minimum gain to a partner if the partner's share of minimum gain is or will be replaced with capital contributions.

D. Nonrecourse Deductions and Minimum Gain Chargebacks if There is a Book/Tax Disparity

Book/tax disparities may exist if contributed property is subject to section 704(c) or if the partnership's property is revalued pursuant to § 1.704–1(b)(2)(iv)(*f*). If partnership property is reflected on the partnership's books at a value that is different from the adjusted tax basis, the minimum gain increases and decreases are determined with reference to the book value. The regulations contain examples illustrating this determination.

If a revaluation of partnership property subject to nonrecourse liabilities causes an increase to the partners' capital accounts (a book-up), the regulations contain a special rule designed to prevent an inappropriate net decrease in minimum gain in the year the revaluation occurs. The partnership first calculates the net increase or decrease in minimum gain using the new book values and the prior year's minimum gain amount. Then, any decrease in minimum gain arising solely from the revaluation is added back (treated as an increase in minimum gain) to the net increase or decrease determined in the first step. In subsequent partnership taxable years, net increases or decreases in partnership minimum gain are determined using book values instead of adjusted tax basis. A special rule to compute minimum gain in the year of revaluation is not needed if the partners' capital accounts are decreased (a book-down). An artificial increase in minimum gain cannot occur if capital accounts are booked down because property cannot be revalued below the amount of any nonrecourse indebtedness to which it is subject. See section 7701(g) and § 1.704–1(b)(2)(iv)(*f*)(*1*).

E. Distributions of Nonrecourse Liability Proceeds

Encumbering property with additional nonrecourse debt that is not used to improve the property often causes an increase in minimum gain because the difference between the basis of the property and the total amount of the debt immediately increases. If the partnership distributes the proceeds of a nonrecourse liability, the distributee partner enjoys the economic benefit of the immediate use of the proceeds but does not bear the economic risk of loss if the partnership cannot pay the debt. If a nonrecourse liability encumbering the property causes minimum gain to increase and a distribution is allocable to the proceeds of this nonrecourse liability, the partner receiving this distribution also receives an additional share of minimum gain, which will be subject to the minimum gain chargeback requirement when the partnership's minimum gain decreases. Any reasonable method (including the rules under § 1.163–8T for allocating debt proceeds among expenditures) may be used to determine if a distribution is allocable to nonrecourse debt proceeds. If a net increase in minimum gain arising from nonrecourse borrowing is carried over to a later taxable year (usually because the proceeds are not distributed in the year of the encumbrance and the partnership does not otherwise have enough deductions to cover the increase in minimum gain), the carried-over portion of the net increase is allocable to any distribution of nonrecourse debt proceeds in the succeeding taxable year.

F. Tiered Partnerships

The regulations contain general rules that determine what effect a lower-tier partnership's items have on the upper-tier partnership's minimum gain. The rules are designed to allow the partners of the upper-tier partnership to look through and account for the lower-tier partnership's items as directly as possible. All nonrecourse deductions and distributions of nonrecourse debt proceeds from the lower-tier partnership increase the upper-tier partnership's minimum gain proportionately. The upper-tier partnership's share of the lower-tier partnership's net decrease in minimum gain is treated as a decrease in the upper-tier partnership's minimum gain (to be aggregated with the upper-tier partnership's other minimum gain increases or decreases). Distributions of nonrecourse debt proceeds from the lower-tier partnership generally retain their status (as nonrecourse debt proceeds) when received by the upper-tier partnership. Nonrecourse deductions allocated by the lower-tier partnership to the upper-tier partnership are treated as depreciation or cost recovery deductions arising from property owned by the upper-tier partnership.

G. Rules For Partner Nonrecourse Debt

The regulations contain rules, which generally parallel the rules applicable to nonrecourse debt, covering nonrecourse debt for which a partner bears the economic risk of loss ("partner nonrecourse debt"). A liability is treated as partner nonrecourse debt to the extent a partner bears the economic risk of loss solely because the partner or a related person (within the meaning of the section 752 regulations) is the creditor or the guarantor and the debt is considered nonrecourse for purposes of § 1.1001–2.

The regulations require the deductions attributable to partner nonrecourse debt to be allocated to the lending or guaranteeing partner. This is accomplished by requiring minimum gain calculations for each separate partner nonrecourse debt. If there is a net increase in the minimum gain attributable to a specific partner nonrecourse debt, the depreciation or cost recovery deductions generated by the property subject to the debt must be allocated to the lending or guaranteeing partner. If there are still not enough depreciation or cost recovery deductions to cover the entire net increase in minimum gain, a pro rata portion of the partnership's other loss items (except for depreciation or cost recovery deductions

on property subject to a partnership nonrecourse liability) is used. A carryover rule applies if there are not enough losses to cover the minimum gain increase.

If there is a net decrease in the minimum gain attributable to a particular partner nonrecourse debt, a minimum gain chargeback requirement generally applies to the partner who was previously allocated the losses (or who received distributions) attributable to the debt. (See parts III and IV below). The minimum gain chargeback requirement is satisfied first with gain from the sale of the property subject to the partner nonrecourse debt and then by a pro rata portion of the partnership's other income and gain items (except to the extent these items have been allocated to satisfy a partnership minimum gain chargeback requirement). Unsatisfied minimum gain chargeback requirements carry over to succeeding taxable years.

III. Description of Minimum Gain Chargeback Approach in the Temporary Regulations

The temporary regulations based a partner's minimum gain chargeback requirement (with respect to both nonrecourse and partner nonrecourse debt) on a "two-prong" calculation. A partner's minimum gain chargeback equaled the greater of (1) the partner's share of the net decrease in minimum gain attributable to a disposition of property securing nonrecourse liabilities, or (2) the partner's deficit capital account, as specially defined. The computation of the partner's deficit capital accounts required a number of deemed increases and decreases that generally—but not precisely—paralleled the alternate test for economic effect under the section 704(b) regulations.

The two-prong approach contained no explicit exceptions. If prong one applied to the net decrease in minimum gain, a chargeback was always imposed. Prong two, however, effectively provided partial relief from the minimum gain chargeback requirement in certain situations. When nonrecourse debt converted to recourse debt or to partner nonrecourse debt (by, for example, the creation of a guarantee) prong two precluded the chargeback to the extent the partner bore the risk of loss, so long as no part of the net decrease in minimum gain was attributable to a disposition of property. When calculating the minimum gain chargeback requirement, prong two increased the partner's deficit capital account to the extent the partner bore the risk of loss for partnership liabilities. Moreover, if the partners had previously restored the nonrecourse deductions and distributions attributable to nonrecourse debt proceeds with income allocations or capital contributions, prong two (but not prong one) did not impose a minimum gain chargeback to the extent the deficits in the partners' capital accounts had been eliminated by these income allocations and capital contributions.

IV. Modifications to the Minimum Gain Chargeback Requirement Made by the Final Regulations

A. Reasons For the Modifications

The complexity of the two-prong calculation was heavily criticized in the comments. The comments stated that the second prong did not always preclude inappropriate chargebacks when debt was converted, refinanced, or otherwise changed. Moreover, the comments stated that, depending on whether the property was sold at the time of the decrease in minimum gain, the two-prong approach treated similar situations inconsistently if the partners restored their nonrecourse deductions with other income allocations (or capital contributions) before the partnership had a net decrease in minimum gain. Under the temporary regulations, if the partners restored their nonrecourse deductions with income allocations or capital contributions and prong one later applied to the net decrease in minimum gain, the minimum gain chargeback always applied and often created economic distortions. However, if prong two applied and if the income allocations and capital contributions fully restored the deficits in the partners' capital accounts, the minimum gain chargeback was not required. The final regulations address these concerns by basing the minimum gain chargeback solely on the partners' shares of minimum gain and providing exceptions where a chargeback is inappropriate.

B. Minimum Cain Chargeback Requirement in the Final Regulations

The final regulations contain a minimum gain chargeback requirement (for both nonrecourse and partner nonrecourse debt), with appropriate exceptions, based exclusively on the partners' shares of minimum gain. Specifically, a partner's minimum gain chargeback equals the partner's share of the partnership's net decrease in minimum gain. A partner's share of the net decrease is measured by that partner's percentage share of the partnership's total minimum gain. For example, if a partner had a 20 percent share of the partnership's total minimum gain and the partnership had a net decrease in minimum gain of $500, the partner's share of the net decrease (and minimum gain chargeback) is $100 (20 percent of $500). A partner's share of minimum gain equals the sum of all past nonrecourse deductions allocated to the partner and distributions attributable to nonrecourse debt proceeds received by the partner; those are the items that need to be restored by the minimum gain chargeback requirement.

A number of exceptions to the mandatory minimum gain chargeback are included to address inappropriate chargebacks. A partner is not subject to a minimum gain chargeback to the extent (1) the partner's share of the net decrease in minimum gain is caused by a guarantee, refinancing, or other change in the debt instrument causing it no longer to be partially or wholly nonrecourse, and (2) the partner bears the economic risk of loss (under the section 752 regulations) for the new liability. A chargeback is inappropriate in this circumstance because partners who bear the risk of loss for the former nonrecourse debt have replaced their nonrecourse deductions with obligations either to contribute money to the partnership or to pay the creditor if the partnership cannot pay the liability. The minimum gain chargeback also does not apply to a partner to the extent the partner contributes capital to the partnership and that capital is used to repay the nonrecourse liability.

The final regulations also contain exceptions to the minimum gain chargeback requirement for partner nonrecourse debt. If partner nonrecourse debt converts to partnership nonrecourse debt, the minimum gain chargeback is deferred. The partner is allocated a share of partnership minimum gain to the extent the chargeback is deferred and thus is subject to the deferred minimum gain chargeback when that debt is paid off or the encumbered property is sold. Other exceptions parallel the exceptions for partnership nonrecourse liabilities.

The final regulations do not allow partners to reduce their shares of minimum gain if the nonrecourse deductions (or distributions of nonrecourse debt proceeds) are restored before there is a net decrease in minimum gain. However, the Commissioner has the discretion to waive the minimum gain chargeback requirement at the partnership's request if the partnership has a net decrease in minimum gain, the minimum gain chargeback would cause economic distortions, and it is not expected that the partnership will have sufficient other income to correct these distortions. In

order for a waiver to be considered, the partnership must demonstrate that: (1) The partners have restored the previous nonrecourse deductions (and distributions of nonrecourse debt proceeds) with net income allocations or capital contributions; and (2) the income allocations that do not meet the minimum gain chargeback requirement more accurately reflect the partners' economic arrangement, as evidenced by the partnership's allocations and distributions and the partners' contributions.

V. Other Comments on the Temporary Regulations

A. Guarantees of Partnership Nonrecourse Debt

Commentators have suggested that allocations attributable to partnership nonrecourse liabilities that have been guaranteed by a partner (or a related party) can be more appropriately treated under the substantial economic effect rules of § 1.704–1(b)(2) than under the partner nonrecourse debt rules. These commentators have argued that guaranteed nonrecourse debt should be distinguished from direct nonrecourse loans made by partners (or related parties) because, to the extent the debt can be satisfied by the guarantee, the partnership will not recognize gain if the lender forecloses on the property. Commentators advocate the distinction on the premise that, in the case of guaranteed debt, partners other than the guarantor may bear the economic burden under the substantial economic effect rules. The rights and obligations of partners and lenders under guarantee arrangements, however, may vary greatly from case to case. As a result, the distinction sought by the commentators may not always be appropriate; in many instances, guaranteed nonrecourse debt is more appropriately treated under the partner nonrecourse debt rules. In addition, the Service and the Treasury believe that, in the case of guaranteed nonrecourse debt and partner nonrecourse loans, transactions may be structured to ensure that partner nonrecourse deductions are allocated properly to the partners that economically bear the risk of loss attributable to those loans. Moreover, some of the commentators' concerns regarding the complexity of the partner nonrecourse debt rules may have been alleviated by the modifications made to the nonrecourse debt rules that are described in part IV above. Therefore, the final regulations continue to treat guaranteed nonrecourse debt under the partner nonrecourse debt rules. Nonetheless, the Service and the Treasury request comments on whether further simplification of the partner nonrecourse debt rules is needed and welcome suggestions for alternative approaches to accounting for allocations attributable to partner nonrecourse debt.

B. Minimum Gain Calculations for Exculpatory Liabilities

A partnership may have a liability that is not secured by any specific property and that is recourse to the partnership as an entity, but explicitly not recourse to any partner (exculpatory liability). Section 1.704–2(b)(3) of the final regulations defines nonrecourse liability by referring to the definition of nonrecourse liability in the regulations under section 752. Under that definition, an exculpatory liability is a nonrecourse liability. The application of the nonrecourse debt rules of § 1.704–2—more specifically, the calculation of minimum gain—may be difficult in the case of an exculpatory liability, however, because the liability is not secured by specific property and the bases of partnership properties that can be reached by the lender in the case of an exculpatory liability may fluctuate greatly. Section 1.704–2 does not prescribe precise rules addressing the allocation of income and loss attributable to exculpatory liabilities. Taxpayers, therefore, are left to treat allocations attributable to these liabilities in a manner that reasonably reflects the principles of section 704(b). Commentators have requested that the treatment of allocations attributable to exculpatory liabilities under the nonrecourse debt rules be clarified. The Service and the Treasury solicit further suggestions on the appropriate treatment of allocations attributable to these liabilities. Suggestions should take into account the practical concerns of partnerships as well as the Service's concerns about the proper allocation of loss and gain items attributable to these liabilities.

VI. Effective Dates and Transition Rules

Comments stated that the transition rules do not correspond exactly with the grandfather provisions of section 752 and are complex. However, a major change to the transition rules could adversely affect some partnerships retroactively. Therefore, the final regulations contain the transition rules as they appear in the temporary regulations with one modification.

The modification expands the grandfather rule for related-party partner nonrecourse debt. But section 752 and the temporary regulations grant permanent grandfather status to nonrecourse loans or guarantees of nonrecourse debt made before January 30, 1989, by persons related to partners as long as there are no material modifications to the debt. The grandfather rule in the temporary regulations for related-party partner nonrecourse debt fails to grandfather certain situations, such as guarantees of interest and certain guarantees of a lower-tier partnership's debt by upper-tier partners. The final regulations amend the related-party grandfather provision to include all pre-January 30, 1989, debt, other than direct partner nonrecourse loans or guarantees of partnership nonrecourse debt, that is grandfathered under the section 752 regulations so long as all the partners in the partnership consistently treat the liability as nonrecourse.

Special Analyses

These final regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It is hereby certified that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that these rules do not have a significant impact on a substantial number of small entities. Therefore, a final Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comments on their impact on small businesses.

Drafting Information

The principal author of these regulations is Susan Pace Hamill, Office of the Assistant Chief Counsel (Passthroughs and Special Industries). However personnel from other offices in the Internal Revenue Service and the Treasury Department participated in their development.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805 * * *

§ 1.704-1 [Amended]

Par. 2. In § 1.704-1(b)(0), the entry for § 1.704-1(b)(4)(iv) is amended by revising the heading to read "Allocations Attributable to Nonrecourse Liabilities."

Par. 3. Section 1.704-1(b)(0) is further amended by removing from the table all headings and section numbers for § 1.704-1(b)(4)(iv) (*a*) through (*h*).

Par. 4. Section 1.704-1(b)(1)(i) is amended by adding the language "and § 1.704-2" at the end of the sixth sentence.

Par. 5-6. Section 1.704-1(b)(2)(ii)(*d*)(*6*) is amended by adding "under § 1.704-2(f)" at the end of the paragraph.

Par. 7. Section 1.704-1(b)(4)(iv) is revised to read as follows:

§ 1.704-1 Partner's distributive share.

* * * * *

(b) * * *

(4) * * *

(iv) *Allocations attributable to nonrecourse liabilities.* The rules for allocations attributable to nonrecourse liabilities are contained in § 1.704-2.

* * * * *

Par. 8. Section 1.704(b)(5) is amended by removing *Examples* (*20*) through (*23*).

Par. 9. Section 1.704-1T(b)(4)(iv) is removed.

Part. 10. New § 1.704-2 is added to read as follows:

§ 1.704-2. Allocations attributable to nonrecourse liabilities.

(a) *Table of contents.* This paragraph contains a listing of the major headings of this § 1.704-2.

§ 1.704-2 Allocations attributable to nonrecourse liabilities.

(a) Table of contents.
(b) General principles and definitions.
(1) Definition of and allocations of nonrecourse deductions.
(2) Definition of and allocations pursuant to a minimum gain chargeback.
(3) Definition of nonrecourse liability.
(4) Definition of partner nonrecourse debt.
(c) Amount of nonrecourse deductions.
(d) Partnership minimum gain.
(1) Amount of partnership minimum gain.
(2) Property subject to more than one liability.
(i) In general.
(ii) Allocating liabilities.
(3) Partnership minimum gain if there is a book/tax disparity.
(4) Special rule for year of revaluation.
(e) Requirements to be satisfied.
(f) Minimum gain chargeback requirement.
(1) In general.
(2) Exception for certain capital conversions and refinancings.
(3) Exception for certain contributions.
(4) Waiver for certain income allocations that fail to meet minimum gain chargeback requirement if minimum gain chargeback distorts economic arrangement.
(5) Additional exceptions.
(6) Partnership items subject to the minimum gain chargeback requirement.
(7) Examples.
(g) Shares of partnership minimum gain.
(1) Partner's share of partnership minimum gain.
(2) Partner's share of the net decrease in partnership minimum gain.
(3) Conversions of recourse or partner nonrecourse debt into nonrecourse debt.
(h) Distribution of nonrecourse liability proceeds allocable to an increase in partnership minimum gain.
(1) In general.
(2) Distribution allocable to nonrecourse liability proceeds.
(3) Option when there is an obligation to restore.
(4) Carryover to immediately succeeding taxable year.
(i) Partnership nonrecourse liabilities where a partner bears the economic risk of loss.
(1) In general.
(2) Definition of and determination of partner nonrecourse deductions.
(3) Determination of partner nonrecourse debt minimum gain.
(4) Chargeback of partner nonrecourse debt minimum gain.
(5) Partner's share of partner nonrecourse debt minimum gain.
(6) Distribution of partner nonrecourse debt proceeds allocable to an increase in partner nonrecourse debt minimum gain.
(j) Ordering rules.
(1) Treatment of partnership losses and deductions.
(i) Partner nonrecourse deductions.
(ii) Partnership nonrecourse deductions.
(iii) Carryover to succeeding taxable year.
(2) Treatment of partnership income and gains.
(i) Minimum gain chargeback.
(ii) Chargeback attributable to decrease in partner nonrecourse debt minimum gain.
(iii) Carryover to succeeding taxable year.
(k) Tiered partnerships.
(1) Increase in upper-tier partnership's minimum gain.
(2) Decrease in upper-tier partnership's minimum gain.
(3) Nonrecourse debt proceeds distributed from the lower-tier partnership to the upper-tier partnership.
(4) Nonrecourse deductions of lower-tier partnership treated as depreciation by upper-tier partnership.
(5) Coordination with partner nonrecourse debt rules.
(l) Effective dates.
(1) In general.
(i) Prospective application.
(ii) Partnerships subject to temporary regulations.
(iii) Partnerships subject to former regulations.
(2) Special rule applicable to pre-January 30, 1989, related party nonrecourse debt.
(3) Transition rule for pre-March 1, 1984, partner nonrecourse debt.
(4) Election.
(m) Examples.

(b) *General principles and definitions*—(1) *Definition of and allocations of nonrecourse deductions.* Allocations of losses, deductions, or section 705(a)(2)(B) expenditures attributable to partnership nonrecourse liabilities ("nonrecourse deductions") cannot have economic effect because the creditor alone bears any economic burden that corresponds to those allocations. Thus, nonrecourse deductions must be allocated in accordance with the partners' interests in the partnership. Paragraph (e) of this section provides a test that deems allocations of nonrecourse deductions to be in accordance with the partners' interests in the partnership. If that test is not satisfied, the partners' distributive shares of nonrecourse deductions are determined under § 1.704-1(b)(3), according to the partners' overall economic interests in the partnership. See also paragraph (i) of this section for special rules regarding the allocation of deductions attributable to nonrecourse liabilities for which a partner bears the economic risk of loss (as described in paragraph (b)(4) of this section).

(2) *Definition of and allocations pursuant to a minimum gain chargeback.* To the extent a nonrecourse liability exceeds the adjusted tax basis of the partnership property it encumbers, a disposition of that property will generate gain that at least equals that excess ("partnership minimum gain"). An increase in partnership minimum gain is created by a decrease in the adjusted tax basis of property encumbered by a nonrecourse liability below the amount of that liability and by a partnership nonrecourse borrowing that exceeds the adjusted tax basis of the property encumbered by the borrowing. Partnership minimum gain decreases as reductions occur in the amount by which the nonrecourse liability exceeds the adjusted tax basis of the property encumbered by the liability. Allocations of gain attributable to a decrease in partnership minimum gain (a "minimum gain chargeback," as required under paragraph (f) of this section) cannot have economic effect because the gain merely offsets nonrecourse deductions previously claimed by the partnership. Thus, to avoid impairing the economic effect of other allocations, allocations pursuant to a minimum gain chargeback must be made to the partners that either were allocated nonrecourse deductions or received distributions of proceeds attributable to a nonrecourse borrowing. Paragraph (e) of this section provides a test that, if met, deems allocations of partnership income pursuant to a minimum gain chargeback to be in accordance with the partners' interests

in the partnership. If property encumbered by a nonrecourse liability is reflected on the partnership's books at a value that differs from its adjusted tax basis, paragraph (d)(3) of this section provides that minimum gain is determined with reference to the property's book basis. See also paragraph (i)(4) of this section for special rules regarding the minimum gain chargeback requirement for partner nonrecourse debt.

(3) *Definition of nonrecourse liability.* "Nonrecourse liability" means a nonrecourse liability as defined in § 1.752–1(a)(2).

(4) *Definition of partner nonrecourse debt.* "Partner nonrecourse debt" or "partner nonrecourse liability" means any partnership liability to the extent the liability is nonrecourse for purposes of § 1.1001–2, and a partner (or related person (within the meaning of § 1.752–4(b)) bears the economic risk of loss under § 1.752–2 because, for example, the partner or related person is the creditor or a guarantor.

(c) *Amount of nonrecourse deductions.* The amount of nonrecourse deductions for a partnership taxable year equals the net increase in partnership minimum gain during the year (determined under paragraph (d) of this section), reduced (but not below zero) by the aggregate distributions made during the year of proceeds of a nonrecourse liability that are allocable to an increase in partnership minimum gain (determined under paragraph (h) of this section). See paragraph (m), *Examples* (1)(i) and (vi), (2), and (3) of this section. However, increases in partnership minimum gain resulting from conversions, refinancings, or other changes to a debt instrument (as described in paragraph (g)(3)) do not generate nonrecourse deductions. Generally, nonrecourse deductions consist first of certain depreciation or cost recovery deductions and then, if necessary, by a pro rata portion of other partnership losses, deductions, and section 705(a)(2)(B) expenditures for that year; excess nonrecourse deductions are carried over. See paragraphs (j)(1) (ii) and (iii) of this section for more specific ordering rules. See also paragraph (m), *Example* (1)(iv) of this section.

(d) *Partnership minimum gain*—(1) *Amount of partnership minimum gain.* The amount of partnership minimum gain is determined by first computing for each partnership nonrecourse liability any gain the partnership would realize if it disposed of the property subject to that liability for no consideration other than full satisfaction of the liability, and then aggregating the separately computed gains. The amount of partnership minimum gain includes minimum gain arising from a conversion, refinancing, or other change to a debt instrument, as described in paragraph (g)(3) of this section, only to the extent a partner is allocated a share of that minimum gain. For any partnership taxable year, the net increase or decrease in partnership minimum gain is determined by comparing the partnership minimum gain on the last day of the immediately preceding taxable year with the partnership minimum gain on the last day of the current taxable year. See paragraph (m), *Examples* (1) (i) and (iv), (2), and (3) of this section.

(2) *Property subject to more than one liability.* (i) *In general.* If property is subject to more than one liability, only the portion of the property's adjusted tax basis that is allocated to a nonrecourse liability under paragraph (d)(2)(ii) of this section is used to compute minimum gain with respect to that liability.

(ii) *Allocating liabilities.* If property is subject to two or more liabilities of equal priority, the property's adjusted tax basis is allocated among the liabilities in proportion to their outstanding balances. If property is subject to two or more liabilities of unequal priority, the adjusted tax basis is allocated first to the liability of the highest priority to the extent of its outstanding balance and then to each liability in descending order of priority to the extent of its outstanding balance, until fully allocated. See paragraph (m), *Example* (1) (v) and (vii) of this section.

(3) *Partnership minimum gain if there is a book/tax disparity.* If partnership property subject to one or more nonrecourse liabilities is, under § 1.704–1(b)(2)(iv) (*d*), (*f*), or (*r*), reflected on the partnership's books at a value that differs from its adjusted tax basis, the determinations under this section are made with reference to the property's book value. See section 704(c) and § 1.704–1(b)(4)(i) for principles that govern the treatment of a partner's share of minimum gain that is eliminated by the revaluation. See also paragraph (m), *Example* (3) of this section.

(4) *Special rule for year of revaluation.* If the partners' capital accounts are increased pursuant to § 1.704–1(b)(2)(iv) (*d*), (*f*), or (*r*) to reflect a revaluation of partnership property subject to a nonrecourse liability, the net increase or decrease in partnership minimum gain for the partnership taxable year of the revaluation is determined by:

(i) First calculating the net decrease or increase in partnership minimum gain using the current year's book values and the prior year's partnership minimum gain amount; and

(ii) Then adding back any decrease in minimum gain arising solely from the revaluation. See paragraph (m), *Example* (3)(iii) of this section. If the partners' capital accounts are decreased to reflect a revaluation, the net increases in partnership minimum gain are determined in the same manner as in the year before the revaluation, but by using book values rather than adjusted tax bases. See section 7701(g) and § 1.704–1(b)(2)(iv)(*f*)(*1*) (property being revalued cannot be booked down below the amount of any nonrecourse liability to which the property is subject).

(e) *Requirements to be satisfied.* Allocations of nonrecourse deductions are deemed to be in accordance with the partners' interests in the partnership only if—

(1) Throughout the full term of the partnership requirements (*1*) and (*2*) of § 1.704–1(b)(2)(ii)(*b*) are satisfied (*i.e.*, capital accounts are maintained in accordance with § 1.704–1(b)(2)(iv) and liquidating distributions are required to be made in accordance with positive capital account balances), and requirement (*3*) of either § 1.704–1(b)(2)(ii)(*b*) or § 1.704–1(b)(2)(ii)(*d*) is satisfied (*i.e.*, partners with deficit capital accounts have an unconditional deficit restoration obligation or agree to a qualified income offset);

(2) Beginning in the first taxable year of the partnership in which there are nonrecourse deductions and thereafter throughout the full term of the partnership, the partnership agreement provides for allocations of nonrecourse deductions in a manner that is reasonably consistent with allocations that have substantial economic effect of some other significant partnership item attributable to the property securing the nonrecourse liabilities;

(3) Beginning in the first taxable year of the partnership that it has nonrecourse deductions or makes a distribution of proceeds of a nonrecourse liability that are allocable to an increase in partnership minimum gain, and thereafter throughout the full term of the partnership, the partnership agreement contains a provision that complies with the minimum gain chargeback requirements of paragraph (f) of this section; and

(4) All other material allocations and capital account adjustments under the partnership agreement are recognized under § 1.704–1(b) (without regard to whether allocations of adjusted tax basis and amount realized under section 613A(c)(7)(D) are recognized under § 1.704–1(b)(4)(v)).

(f) *Minimum gain chargeback requirement*—(1) *In general.* If there is a net decrease in partnership minimum gain for a partnership taxable year, the minimum gain chargeback requirement applies and each partner must be allocated items of partnership income and gain for that year equal to that partner's share of the net decrease in partnership minimum gain (within the meaning of paragraph (g)(2)).

(2) *Exception for certain conversions and refinancings.* A partner is not subject to the minimum gain chargeback requirement to the extent the partner's share of the net decrease in partnership minimum gain is caused by a guarantee, refinancing, or other change in the debt instrument causing it to become partially or wholly recourse debt or partner nonrecourse debt, and the partner bears the economic risk of loss (within the meaning of § 1.752–2) for the newly guaranteed, refinanced, or otherwise changed liability.

(3) *Exception for certain capital contributions.* A partner is not subject to the minimum gain chargeback requirement to the extent the partner contributes capital to the partnership that is used to repay the nonrecourse liability, and the partner's share of the net decrease in partnership minimum gain results from the repayment. See paragraph (m), *Example* (1)(iv) of this section.

(4) *Waiver for certain income allocations that fail to meet minimum gain chargeback requirement if minimum gain chargeback distorts economic arrangement.* In any taxable year that a partnership has a net decrease in partnership minimum gain, if the minimum gain chargeback requirement would cause a distortion in the economic arrangement among the partners and it is not expected that the partnership will have sufficient other income to correct that distortion, the Commissioner has the discretion, if requested by the partnership, to waive the minimum gain chargeback requirement. The following facts must be demonstrated in order for a request for a waiver to be considered:

(i) The partners have made capital contributions or received net income allocations that have restored the previous nonrecourse deductions and the distributions attributable to proceeds of a nonrecourse liability; and

(ii) The minimum gain chargeback requirement would distort the partners' economic arrangement as reflected in the partnership agreement and as evidenced over the term of the partnership by the partnership's allocations and distributions and the partners' contributions.

(5) *Additional Exceptions.* The Commissioner may, by revenue ruling, provide additional exceptions to the minimum gain chargeback requirement.

(6) *Partnership items subject to the minimum gain chargeback requirement.* Any minimum gain chargeback required for a partnership taxable year consists first of certain gains recognized from the disposition of partnership property subject to one or more partnership nonrecourse liabilities and then if necessary consists of a pro rata portion of the partnership's other items of income and gain for that year. If the amount of the minimum gain chargeback requirement exceeds the partnership's income and gains for the taxable year, the excess carries over. See paragraphs (j)(2) (i) and (iii) of this section for more specific ordering rules.

(7) *Examples.* The following examples illustrate the provisions in § 1.704–2(f).

Example 1. Partnership AB consists of two partners, limited partner A and general partner B. Partner A contributes $90 and Partner B contributes $10 to the partnership. The partnership agreement has a minimum gain chargeback provision and provides that, except as otherwise required by section 704(c), all losses will be allocated 90 percent to A and 10 percent to B; and that all income will be allocated first to restore previous losses and thereafter 50 percent to A and 50 percent to B. Distributions are made first to return initial capital to the partners and then 50 percent to A and 50 percent to B. Final distributions are made in accordance with capital account balances. The partnership borrows $200 on a nonrecourse basis from an unrelated third party and purchases an asset for $300. The partnership's only tax item for each of the first three years in $100 of depreciation on the asset. A's and B's shares of minimum gain (under paragraph (g) of this section) and deficit capital account balances are $180 and $20 respectively at the end of the third year. In the fourth year, the partnership earns $400 of net operating income and allocates the first $300 to restore the previous losses (*i.e.*, $270 to A and $30 to B); the last $100 is allocated $50 each. The partnership distributes $200 of the available cash that same year; the first $100 is distributed $90 to A and $10 to B to return their capital contributions; the last $100 is distributed $50 each to reflect their ratio for sharing profits.

	A	B
Capital account on formation	$90	$10
Less: net loss in years 1–3	($270)	($30)
Capital account at end of year 3	($180)	($20)
Allocation of operating income to restore nonrecourse deductions	$180	$20
Allocation of operating income to restore capital contributions	$90	$10
Allocation of operating income to reflect profits	$50	$50
Capital accounts after allocation of operating income	$140	$60
Distribution reflecting capital contribution	($90)	($10)
Distribution in profit-sharing ratio	($50)	($50)
Capital accounts following distribution	($0)	($0)

In the fifth year, the partnership sells the property for $300 and realizes $300 of gain. $200 of the proceeds are used to pay the nonrecourse lender. The partnership has $300 to distribute, and the partners expect to share that equally. Absent a waiver under paragraph (f)(4) of this section, the minimum gain chargeback would require the partnership to allocate the first $200 of the gain $180 to A and $20 to B, which would distort their economic arrangement. This allocation, together with the allocation of the $100 profit $50 to each partner, would result in A having a positive capital account balance of $230 and B having a positive capital account balance of $70. The allocation of income in year 4 in effect anticipated the minimum gain chargeback that did not occur until year 5. Assuming the partnership would not have sufficient other income to correct the distortion that would otherwise result, the partnership may request that the Commissioner exercise his or her discretion to waive the minimum gain chargeback requirement and recognize allocations that would allow A and B to share equally the gain on the sale of the property. These allocations would bring the partners' capital accounts to $150 each, allowing them to share the last $300 equally. The Commissioner may, in his or her discretion, permit this allocation pursuant to paragraph (f)(4) of this section because the minimum gain chargeback would distort the partners' economic arrangement over the term of the partnership as reflected in the partnership agreement and as evidenced by the partner's contributions and the partnerships allocations and distributions.

Example 2. A and B form a partnership, contribute $25 each to the partnership's capital, and agree to share all losses and profits 50 percent each. Neither partner has an unconditional deficit restoration obligation and all the requirements in paragraph (e) of this section are met. The partnership obtains a nonrecourse loan from an unrelated third party of $100 and purchases two assets, stock for $50 and depreciable property for $100. The nonrecourse loan is secured by the partnership's depreciable property. The partnership generates $20 of depreciation in each of the first five years as its only tax item. These deductions are properly treated as nonrecourse deductions and the allocation of these deductions 50 percent to A and 50 percent to B is deemed to be in accordance with the partners' interests in the partnership. At the end of year five, A and B each have a $25 deficit capital account and a $50 share of partnership minimum gain. In the beginning of year six, (at the lender's request), A guarantees the entire nonrecourse liability.

Pursuant to paragraph (d)(1) of this section, the partnership has a net decrease in minimum gain of $100 and under paragraph (g)(2) of this section, A's and B's shares of that net decrease are $50 each. Under paragraph (f)(1) of this section (the minimum gain chargeback requirement), B is subject to a $50 minimum gain chargeback. Because the partnership has no income in year six, the entire $50 carries over as a minimum gain chargeback requirement to succeeding taxable years until their is enough income to cover the minimum gain chargeback requirement. Under the exception to the minimum gain chargeback in paragraph (f)(2) of this section, A is not subject to a minimum gain chargeback for A's $50 share of the net decrease because A bears the economic risk of loss for the liability. Instead, A's share of partner nonrecourse debt minimum gain is $50 pursuant to paragraph (i)(3) of this section. In year seven, the partnership earns $100 of net operating income and uses the money to repay the entire $100 nonrecourse debt (that A has guaranteed). Under paragraph (i)(3) of this section, the partnership has a net decrease in partner nonrecourse debt minimum gain of $50. B must be allocated $50 of the operating income pursuant to the carried over minimum gain chargeback requirement; pursuant to paragraph (i)(4) of this section, the other $50 of operating income must be allocated to A as a partner nonrecourse debt minimum gain chargeback.

(g) *Shares of partnership minimum gain—(1) Partner's share of partnership minimum gain.* Except as increased in paragraph (g) (3) of this section, a partner's share of partnership minimum gain at the end of any partnership taxable year equals:

(i) The sum of nonrecourse deductions allocated to that partner (and to that partner's predecessors in interest) up to that time and the distributions made to that partner (and to that partner's predecessors in interest) up to that time of proceeds of a nonrecourse liability allocable to an increase in partnership minimum gain (see paragraph (h)(1) of this section); minus

(ii) The sum of that partner's (and that partner's predecessors' in interest) aggregate share of the net decreases in partnership minimum gain plus their aggregate share of decreases resulting from revaluations of partnership property subject to one or more partnership nonrecourse liabilities.

For purposes of § 1.704(b)(2)(ii)(*d*), a partner's share of partnership minimum gain is added to the limited dollar amount, if any, of the deficit balance in the partner's capital account that the partner is obligated to restore. See paragraph (m), *Examples* (1)(i) and (3)(i) of this section.

(2) *Partner's share of the net decrease in partnership minimum gain.* A partner's share of the net decrease in partnership minimum gain is the amount of the total net decrease multiplied by the partner's percentage share of the partnership's minimum gain at the end of the immediately preceding taxable year. A partner's share of any decrease in partnership minimum gain resulting from a revaluation of partnership property equals the increase in the partner's capital account attributable to the revaluation to the extent the reduction in minimum gain is caused by the revaluation. See paragraph (m), *Example* (3)(ii) of this section.

(3) *Conversions of recourse or partner nonrecourse debt into nonrecourse debt.* A partner's share of partnership minimum gain is increased to the extent provided in this paragraph (g)(3) if a refinancing, the lapse of a guarantee, or other change to a debt instrument causes a recourse or partner nonrecourse liability to become partially or wholly nonrecourse. If a recourse liability becomes a nonrecourse liability, a partner has a share of the partnership's minimum gain that results from the conversion equal to the partner's deficit capital account (determined under § 1.704–1(b)(2)(iv)) to the extent the partner no longer bears the economic burden for the entire deficit capital account as a result of the conversion. For purposes of the preceding sentence, the determination of the extent to which a partner bears the economic burden for a deficit capital account is made by determining the consequences to the partner in the case of a complete liquidation of the partnership immediately after the conversion applying the rules described in § 1.704–1(b)(2)(iii)(*c*) that deem the value of partnership property to equal its basis, taking into account section 7701(g) in the case of property that secures nonrecourse indebtedness. If a partner nonrecourse debt becomes a nonrecourse liability, the partner's share of partnership minimum gain is increased to the extent the partner is not subject to the minimum gain chargeback requirement under paragraph (i)(4) of this section.

(h) *Distribution of nonrecourse liability proceeds allocable to an increase in partnership minimum gain—*(1) *In general.* If during its taxable year a partnership makes a distribution to the partners allocable to the proceeds of a nonrecourse liability, the distribution is allocable to an increase in partnership minimum gain to the extent the increase results from encumbering partnership property with aggregate nonrecourse liabilities that exceed the property's adjusted tax basis. See paragraph (m), *Example* (1)(vi) of this section. If the net increase in partnership minimum gain for a partnership taxable year is allocable to more than one nonrecourse liability, the net increase is allocated among the liabilities on a pro rata basis based on the outstanding balance of each liability.

(2) *Distribution allocable to nonrecourse liability proceeds.* A partnership may use any reasonable method to determine whether a distribution by the partnership to one or more partners is allocable to proceeds of a nonrecourse liability. The rules prescribed under § 1.163–8T for allocating debt proceeds among expenditures (applying those rules to the partnership as if it were an individual) constitute a reasonable method for determining whether the nonrecourse liability proceeds are distributed to the partners and the partners to whom the proceeds are distributed.

(3) *Option when there is an obligation to restore.* A partnership may treat any distribution to a partner of the proceeds of a nonrecourse liability (that would otherwise be allocable to an increase in partnership minimum gain) as a distribution that is not allocable to an increase in partnership minimum gain to the extent the distribution does not cause or increase a deficit balance in the partner's capital account that exceeds the amount the partner is otherwise obligated to restore (within the meaning of § 1.704–1(b)(2)(ii)(*c*)) as of the end of the partnership taxable year in which the distribution occurs.

(4) *Carryover to immediately succeeding taxable year.* The carryover rule of this paragraph applies if the net increase in partnership minimum gain for a partnership taxable year that is allocable to a nonrecourse liability under paragraph (h)(2) of this section exceeds the distributions allocable to the proceeds of the liability ("excess allocable amount"), and all or part of the net increase in partnership minimum gain for the year is carried over as an increase in partnership minimum gain for the immediately succeeding taxable year (pursuant to paragraph (j)(1)(iii) of this section). If the carryover rule of this paragraph applies, the excess allocable amount (or the amount carried over under paragraph (j)(1)(iii) of this section, if less) is treated in the succeeding taxable year as an increase in partnership minimum gain that arose in that year as a result of incurring the nonrecourse liability to which the excess allocable amount is attributable. See paragraph (m), *Example* (1)(vi) of this section. If for a partnership taxable year there is an excess allocable amount with respect to more than one partnership nonrecourse liability, the excess allocable amount is allocated to

each liability on a pro rata basis based on the outstanding balance of each liability.

(i) *Partnership nonrecourse liabilities where a partner bears the economic risk of loss*—(1) *In general.* Partnership losses, deductions, or section 705(a)(2)(B) expenditures that are attributable to a particular partner nonrecourse liability ("partner nonrecourse deductions," as defined in paragraph (i)(2) of this section) must be allocated to the partner that bears the economic risk of loss for the liability. If more than one partner bears the economic risk of loss for a partner nonrecourse liability, any partner nonrecourse deductions attributable to that liability must be allocated among the partners according to the ratio in which they bear the economic risk of loss. If partners bear the economic risk of loss for different portions of a liability, each portion is treated as a separate partner nonrecourse liability.

(2) *Definition of and determination of partner nonrecourse deductions.* For any partnership taxable year, the amount of partner nonrecourse deductions with respect to a partner nonrecourse debt equals the net increase during the year in minimum gain attributable to the partner nonrecourse debt ("partner nonrecourse debt minimum gain"), reduced (but not below zero) by proceeds of the liability distributed during the year to the partner bearing the economic risk of loss for the liability that are both attributable to the liability and allocable to an increase in the partner nonrecourse debt minimum gain. See paragraph (m), *Example* (1) (viii) and (ix) of this section. The determination of which partnership items constitute the partner nonrecourse deductions with respect to a partner nonrecourse debt must be made in a manner consistent with the provisions of paragraphs (c) and (j)(1) (i) and (iii) of this section.

(3) *Determination of partner nonrecourse debt minimum gain.* For any partnership taxable year, the determination of partner nonrecourse debt minimum gain and the net increase or decrease in partner nonrecourse debt minimum gain must be made in a manner consistent with the provisions of paragraphs (d) and (g)(3) of this section.

(4) *Chargeback of partner nonrecourse debt minimum gain.* If during a partnership taxable year there is a net decrease in partner nonrecourse debt minimum gain, any partner with a share of that partner nonrecourse debt minimum gain (determined under paragraph (i)(5) of this section) as of the beginning of the year must be allocated items of income and gain for the year (and, if necessary, for succeeding years) equal to that partner's share of the net decrease in the partner nonrecourse debt minimum gain. A partner's share of the net decrease in partner nonrecourse debt minimum gain is determined in a manner consistent with the provisions of paragraph (g)(2) of this section. A partner is not subject to this minimum gain chargeback, however, to the extent the net decrease in partner nonrecourse debt minimum gain arises because the liability ceases to be partner nonrecourse debt due to a conversion, refinancing, or other change in the debt instrument that causes it to become partially or wholly a nonrecourse liability. The amount that would otherwise be subject to the partner nonrecourse debt minimum gain chargeback is added to the partner's share of partnership minimum gain under paragraph (g)(3) of this section. In addition, rules consistent with the provisions of paragraphs (f) (2), (3), (4), and (5) of this section apply with respect to partner nonrecourse debt in appropriate circumstances. The determination of which items of partnership income and gain must be allocated pursuant to this paragraph (i)(4) is made in a manner that is consistent with the provisions of paragraph (f)(5) of this section. See paragraph (j)(2) (ii) and (iii) of this section for more specific rules.

(5) *Partner's share of partner nonrecourse debt minimum gain.* A partner's share of partner nonrecourse debt minimum gain at the end of any partnership taxable year is determined in a manner consistent with the provisions of paragraphs (g)(1) and (g)(3) of this section with respect to each particular partner nonrecourse debt for which the partner bears the economic risk of loss. For purposes of § 1.704–1(b)(2)(ii)(*d*), a partner's share of partner nonrecourse debt minimum gain is added to the limited dollar amount, if any, of the deficit balance in the partner's capital account that the partner is obligated to restore, and the partner is not otherwise considered to have a deficit restoration obligation as a result of bearing the economic risk of loss for any partner nonrecourse debt. See paragraph (m), *Example* (1)(viii) of this section.

(6) *Distribution of partner nonrecourse debt proceeds allocable to an increase in partner nonrecourse debt minimum gain.* Rules consistent with the provisions of paragraph (h) of this section apply to distributions of the proceeds of partner nonrecourse debt.

(j) *Ordering Rules.* For purposes of this section, the following ordering rules apply to partnership items. Notwithstanding any other provision in this section and § 1.704–1, allocations of partner nonrecourse deductions, nonrecourse deductions, and minimum gain chargebacks are made before any other allocations.

(1) *Treatment of partnership losses and deductions.* (i) *Partner nonrecourse deductions.* Partnership losses, deductions, and section 705(a)(2)(B) expenditures are treated as partner nonrecourse deductions in the amount determined under paragraph (i)(2) of this section (determining partner nonrecourse deductions) in the following order:

(A) First, depreciation or cost recovery deductions with respect to property that is subject to partner nonrecourse debt;

(B) Then, if necessary, a pro rata portion of the partnership's other deductions, losses, and section 705(a)(2)(B) items.

Depreciation or cost recovery deductions with respect to property that is subject to a partnership nonrecourse liability is first treated as a partnership nonrecourse deduction and any excess is treated as a partner nonrecourse deduction under this paragraph (j)(1)(i).

(ii) *Partnership nonrecourse deductions.* Partnership losses, deductions, and section 705(a)(2)(B) expenditures are treated as partnership nonrecourse deductions in the amount determined under paragraph (c) of this section (determining nonrecourse deductions) in the following order:

(A) First, depreciation or cost recovery deductions with respect to property that is subject to partnership nonrecourse liabilities;

(B) Then, if necessary, a pro rata portion of the partnership's other deductions, losses, and section 705(a)(2)(B) items.

Depreciation or cost recovery deductions with respect to property that is subject to partner nonrecourse debt is first treated as a partner nonrecourse deduction and any excess is treated as a partnership nonrecourse deduction under this paragraph (j)(1)(ii). Any other item that is treated as a partner nonrecourse deduction will in no event be treated as a partnership nonrecourse deduction.

(iii) *Carryover to succeeding taxable year.* If the amount of partner nonrecourse deductions or nonrecourse deductions exceed the partnership's losses, deductions, and section 705(a)(2)(B) expenditures for the taxable year (determined under paragraphs (j)(1) (i) and (ii) of this section), the excess is treated as an increase in partner nonrecourse debt minimum gain or

partnership minimum gain in the immediately succeeding partnership taxable year. See paragraph (m), *Example* (1)(vi) of this section.

(2) *Treatment of partnership income and gains.* (i) *Minimum gain chargeback.* Items of partnership income and gain equal to the minimum gain chargeback requirement (determined under paragraph (f) of this section) are allocated as a minimum gain chargeback in the following order:

(A) First, gain from the disposition of property subject to partnership nonrecourse liabilities;

(B) Then, if necessary, a pro rata portion of the partnership's other items of income and gain for that year. Gain from the disposition of property subject to partner nonrecourse debt is allocated to satisfy a minimum gain chargeback requirement for partnership nonrecourse debt only to the extent not allocated under paragraph (j)(2)(ii) of this section.

(ii) *Chargeback attributable to decrease in partner nonrecourse debt minimum gain.* Items of partnership income and gain equal to the partner nonrecourse debt minimum gain chargeback (determined under paragraph (i)(4) of this section) are allocated to satisfy a partner nonrecourse debt minimum gain chargeback in the following order:

(A) First, gain from the disposition of property subject to partner nonrecourse debt;

(B) Then, if necessary, a pro rata portion of the partnership's other items of income and gain for that year. Gain from the disposition of property subject to a partnership nonrecourse liability is allocated to satisfy a partner nonrecourse debt minimum gain chargeback only to the extent not allocated under paragraph (j)(2)(i) of this section. An item of partnership income and gain that is allocated to satisfy a minimum gain chargeback under paragraph (f) of this section is not allocated to satisfy a minimum gain chargeback under paragraph (i)(4).

(iii) *Carryover to succeeding taxable year.* If a minimum gain chargeback requirement (determined under paragraphs (f) and (i)(4) of this section) exceeds the partnership's income and gains for the taxable year, the excess is treated as a minimum gain chargeback requirement in the immediately succeeding partnership taxable years until fully charged back.

(k) *Tiered partnerships.* For purposes of this section, the following rules determine the effect on partnership minimum gain when a partnership ("upper-tier partnership") is a partner in another partnership ("lower-tier partnership").

(1) *Increase in upper-tier partnership's minimum gain.* The sum of the nonrecourse deductions that the lower-tier partnership allocates to the upper-tier partnership for any taxable year of the upper-tier partnership, and the distributions made during that taxable year from the lower-tier partnership to the upper-tier partnership of proceeds of nonrecourse debt that are allocable to an increase in the lower-tier partnership's minimum gain, is treated as an increase in the upper-tier partnership's minimum gain.

(2) *Decrease in upper-tier partnership's minimum gain.* The upper-tier partnership's share for its taxable year of the lower-tier partnership's net decrease in its minimum gain is treated as a decrease in the upper-tier partnership's minimum gain for that taxable year.

(3) *Nonrecourse debt proceeds distributed from the lower-tier partnership to the upper-tier partnership.* All distributions from the lower-tier partnership to the upper-tier partnership during the upper-tier partnership's taxable year of proceeds of a nonrecourse liability allocable to an increase in the lower-tier partnership's minimum gain are treated as proceeds of a nonrecourse liability of the upper-tier partnership. The increase in the upper-tier partnership's minimum gain (under paragraph (k)(1) of this section) attributable to the receipt of those distributions is, for purposes of paragraph (h) of this section, treated as an increase in the upper-tier partnership's minimum gain arising from encumbering property of the upper-tier partnership with a nonrecourse liability of the upper-tier partnership.

(4) *Nonrecourse deductions of lower-tier partnership treated as depreciation by upper-tier partnership.* For purposes of paragraph (c) of this section, all nonrecourse deductions allocated by the lower-tier partnership to the upper-tier partnership for the upper-tier partnership's taxable year are treated as depreciation or cost recovery deductions with respect to property owned by the upper-tier partnership and subject to a nonrecourse liability of the upper-tier partnership with respect to which minimum gain increased during the year by the amount of the nonrecourse deductions.

(5) *Coordination with partner nonrecourse debt rules.* The lower-tier partnership's liabilities that are treated as the upper-tier partnership's liabilities under § 1.752–4(a) are treated as the upper-tier partnership's liabilities for purposes of applying paragraph (i) of this section. Rules consistent with the provisions of paragraphs (k)(1) through (k)(5) of this section apply to determine the allocations that the upper-tier partnership must make with respect to any liability that constitutes a nonrecourse debt for which one or more partners of the upper-tier partnership bear the economic risk of loss.

(l) *Effective dates*—(1) *In general*—(i) *Prospective application.* Except as otherwise provided in this paragraph (l), this section applies for partnership taxable years beginning on or after December 28, 1991. For the rules applicable to taxable years beginning after December 29, 1988, and before December 28, 1991, see former § 1.704–1T(b)(4)(iv). For the rules applicable to taxable years beginning on or before December 29, 1988, see former § 1.704–1(b)(4)(iv).

(ii) *Partnerships subject to temporary regulations.* If a partnership agreement entered into after December 29, 1988, and before December 28, 1991, complied with the provisions of former § 1.704–1T(b)(4)(iv) before December 28, 1991—

(A) The provisions of former § 1.704–1T(b)(4)(iv) continue to apply to the partnership for any taxable year beginning on or after December 28, 1991, (unless the partnership makes an election under paragraph (l)(4) of this section) and ending before any subsequent material modification to the partnership agreement; and

(B) The provisions of this section do not apply to the partnership for any of those taxable years.

(iii) *Partnerships subject to former regulations.* If a partnership agreement entered into on or before December 29, 1988, complied with the provisions of former § 1.704–1(b)(4)(iv)(*d*) on or before that date—

(A) The provisions of former § 1.704–1(b)(4)(iv) (*a*) through (*f*) continue to apply to the partnership for any taxable year beginning after that date (unless the partnership made an election under § 1.704–1T(b)(4)(iv)(*m*)(*4*) in a partnership taxable year ending before December 28, 1991, or makes an election under paragraph (l)(4) of this section and ending before any subsequent material modification to the partnership agreement; and

(B) The provisions of this section do not apply to the partnership for any of those taxable years.

(2) *Special rule applicable to pre-January 30, 1989, related party nonrecourse debt.* For purposes of this section and former § 1.704–1T(b)(4)(iv), if—

(i) A partnership liability would, but for this paragraph (l)(2) of this section, constitute a partner nonrecourse debt; and

(ii) Sections 1.752–1 through –3 or former §§ 1.752–1T through –3T (whichever is applicable) do not apply to the liability;

the liability is, notwithstanding paragraphs (i) and (b)(4) of this section, treated as a nonrecourse liability of the partnership, and not as a partner nonrecourse debt, to the extent the liability would be so treated under this section (or § 1.704–1T(b)(4)(iv)) if the determination of the extent to which one or more partners bears the economic risk of loss for the liability under § 1.752–1 or former § 1.752–1T were made without regard to the economic risk of loss that any partner would otherwise be considered to bear for the liability by reason of any obligation undertaken or interest as a creditor acquired prior to January 30, 1989, by a person related to the partner (within the meaning of § 1.752–4(b) or former § 1.752–1T(h)). For purposes of the preceding sentence, if a related person undertakes an obligation or acquires an interest as a creditor on or after January 30, 1989, pursuant to a written binding contract in effect prior to January 30, 1989, and at all times thereafter, the obligation or interest as a creditor is treated as if it were undertaken or acquired prior to January 30, 1989. However, for partnership taxable years beginning on or after December 28, 1991, a pre-January 30, 1989, liability, other than a liability subject to paragraph (l)(3) of this section or former § 1.704–1T(b)(4)(iv)(*m*)(*3*) (whichever is applicable), that is treated as grandfathered under former §§ 1.752–1T through –3T (whichever is applicable) will be treated as a nonrecourse liability for purposes of this section provided that all partners in the partnership consistently treat the liability as nonrecourse for partnership taxable years beginning on or after December 28, 1988.

(3) *Transition rule for pre-March 1, 1984, partner nonrecourse debt.* If a partnership liability would, but for this paragraph (l)(3) or former § 1.704–1T(b)(4)(iv), constitute a partner nonrecourse debt and the liability constitutes grandfathered partner nonrecourse debt that is appropriately treated as a nonrecourse liability of the partnership under § 1.752–1 (as in effect prior to December 29, 1988)—

(i) The liability is, notwithstanding paragraphs (i) and (b)(4) of this section, former § 1.704–1T(b)(4)(iv), and former § 1.704–1(b)(4)(iv), treated as a nonrecourse liability of the partnership for purposes of this section and for purposes of former § 1.704–1T(b)(4)(iv) and former § 1.704–1(b)(4)(iv) to the extent of the amount, if any, by which the smallest outstanding balance of the liability during the period beginning at the end of the first partnership taxable year ending on or after December 31, 1986, and ending at the time of any determination under this paragraph (l)(3)(i) or former § 1.704–1T(b)(4)(iv)(*m*)(*3*)(*i*) exceeds the aggregate amount of the adjusted basis (or book value) of partnership property allocable to the liability (determined in accordance with former § 1.704–1(b)(4)(iv)(*c*) (*1*) and (*2*) at the end of the first partnership taxable year ending on or after December 31, 1986); and

(ii) In applying this section to the liability, former § 1.704–1(b)(4)(iv)(*c*) (*1*) and (*2*) is applied as if all of the adjusted basis of partnership property allocable to the liability is allocable to the portion of the liability that is treated as a partner nonrecourse debt and as if none of the adjusted basis of partnership property that is allocable to the liability is allocable to the portion of the liability that is treated as a nonrecourse liability under this paragraph (l)(3) and former § 1.704–1T (b)(4)(iv)(*m*)(*3*)(*i*).

For purposes of the preceding sentence, a grandfathered partner debt is any partnership liability that was not subject to former § § 1.752–1T and –3T but that would have been subject to those sections under § 1.752–4T(b) if the liability had arisen (other than pursuant to a written binding contract) on or after March 1, 1984. A partnership liability is not considered to have been subject to § § 1.752–2T and –3T solely because a portion of the liability was treated as a liability to which those sections apply under § 1.752–4(e).

(4) *Election.* A partnership may elect to apply the provisions of this section to the first taxable year of the partnership ending on or after December 28, 1991. An election under this paragraph (l)(4) is made by attaching a written statement to the partnership return for the first taxable year of the partnership ending on or after December 28, 1991. The written statement must include the name, address, and taxpayer identification number of the partnership making the statement and must declare that an election is made under this paragraph (l)(4).

(m) *Examples.* The principles of this section are illustrated by the following examples:

Example 1. Nonrecourse deductions and partnerhip minimum gain. For *Example* 1, unless otherwise provided, the following facts are assumed. LP, the limited partner, and GP, the general partner, form a limited partnership to acquire and operate a commercial office building. LP contributes $180,000, and GP contributes $20,000. The partnership obtains an $800,000 nonrecourse loan and purchases the building (on leased land) for $1,000,000. The nonrecourse loan is secured only by the building, and no principal payments are due for 5 years. The partnership agreement provides that GP will be required to restore any deficit balance in GP's capital account following the liquidation of GP'sinterest (as set forth in § 1.704–1 (b)(2)(ii)(*b*)(T33)), and LP will not be required to restore any deficit balance in LP's capital account following the liquidation of LP's interest. The partnership agreement contains the following provisions required by paragraph (e) of this section; a qualified income offset (as defined in § 1.704–1(b)(2)(ii)(*d*)); a minimum gain chargeback (in accordance with paragraph (f) of this section); a provision that the partners' capital accounts will be determined and maintained in accordance with § 1.704–1(b)(2)(ii)(*b*)(*1*); and a provision that distributions will be made in accordance with partners' positive capital account balances (as set forth in § 1.704–1(b)(2)(ii)(*b*)(*2*)). In addition, as of the end of each partnership taxable year discussed herein, the items described in § 1.704–1(b)(2)(ii)(*d*) (*4*), (*5*), and (*6*) are not reasonably expected to cause or increase a deficit balance in LP's capital account. The partnership agreement provides that, except as otherwise required by its qualified income offset and minimum gain chargeback provisions, all partnership items will be allocated 90 percent to LP and 10 percent to GP until the first time when the partnership has recognized items of income and gain that exceed the items of loss and deduction it has recognized over its life, and all further partnership items will be allocated equally between LP and GP. Finally, the partnership agreement provides that all distributions, other than distributions in liquidation of the partnership or of a partner's interest in the partnership, will be made 90 percent to LP and 10 percent to GP until a total of $200,000 has been distributed, and thereafter all the distributions will be made equally to LP and GP. In each of the partnership's first 2 taxable years, it generates rental income of $95,000, operating expenses (including land lease payments) of $10,000, interest expense of $80,000, and a depreciation deduction of $90,000, resulting in a net taxable loss of $85,000 in each of those years. The allocations of these losses 90 per percent of LP and 10 percent to GP have substantial economic effect.

	LP	GP
Capital account on formation	$180,000	$20,000
Less: net loss in years 1 and 2	(153,000)	(17,000)
Capital account at end of year 2	27,000	3,000

In the partnership's third taxable year, it again generates rental income of $95,000, operating expenses of $10,000, interest expense of $80,000, and a depreciation deduction of $90,000, resulting in net taxable

loss of $85,000. The partnership makes no distributions.

(i) *Calculation of nonrecourse deductions and partnership minimum gain.* If the partnership were to dispose of the building in full satisfaction of the nonrecourse liability at the end of the third year, it would realize $70,000 of gain ($800,000 amount realized less $730,000 adjusted tax basis). Because the amount of partnership minimum gain at the end of the third year (and the net increase in partnership minimum gain during the year) is $70,000, there are partnership nonrecourse deductions for that year of $70,000, consisting of depreciation deductions allowable with respect to the building of $70,000. Pursuant to the partnership agreement, all partnership items comprising the net taxable loss of $85,000, including the $70,000 nonrecourse deduction, are allocated 90 percent to LP and 10 percent to GP. The allocation of these items, other than the nonrecourse deductions, has substantial economic effect.

	LP	GP
Capital account at end of year 2	$27,000	$3,000
Less: net loss in year 3 (without nonrecourse deductions)	(13,500)	(1,500)
Less: nonrecourse deductions in year 3	(63,000)	(7,000)
Capital account at end of year 3	(49,500)	(5,500)

The allocation of the $70,000 nonrecourse deduction satisfies requirement (2) of paragraph (e) of this section because it is consistent with allocations having substantial economic effect of other significant partnership items attributable to the building. Because the remaining requirements of paragraph (e) of this section are satisfied, thee allocation of nonrecourse deductions is deemed to be in accordance with the partners' interests in the partnership. At the end of the partnership's third taxable year, LP's and GP's shares of partnership minimum gain are $63,000 and $7,000, respectively. Therefore, pursuant to paragraph (g)(1) of this section, LP is treated as obligated to restore a deficit capital account balance of $63,000, so that in the succeeding year LP could be allocated up to an additional $13,500 of partnership deductions, losses, and section 705(a)(2)(B) items that are not nonrecourse deductions. Even though this allocation would increase a deficit capital account balance, it would be considered to have economic effect under the alternate economic effect test contained in § 1.704–1(b)(2)(ii)(*d*). If the partnership were to dispose of the building in full satisfaction of the nonrecourse liability at the beginning of the partnership's fourth taxable year (and had no other economic activity in that year), the partnership minimum gain would be decreased from $70,000 to zero, and the minimum gain chargeback would require that LP and GP be allocated $63,000 and $7,000, respectively, of the gain from that disposition.

(ii) *Illustration of reasonable consistency requirement.* Assume instead that the partnership agreement provides that all nonrecourse deductions of the partnership will be allocated equally between LP and GP. Furthermore, at the time the partnership agreement is entered into, there is a reasonable likelihood that over the partnership's life it will realize amounts of income and gain significantly in excess of amounts of loss and deduction (other than nonrecourse deductions). The equal allocation of excess income and gain has substantial economic effect.

	LP	GP
Capital account on formation	$180,000	$20,000
Less: net loss in years 1 and 2	(153,000)	(17,000)
Less: net loss in year (without nonrecourse deductions)	(13,500)	(1,500)
Less: nonrecourse deductions in year 3	(35,000)	(35,000)
Capital account at end of year 3	(21,500)	(33,500)

The allocation of the $70,000 nonrecourse deduction equally between LP and GP satisfies requirement (2) of paragraph (e) of this section because the allocation is consistent with allocations, which will have substantial economic effect, of other significant partnership items attributable to the building. Because the remaining requirements of paragraph (e) of this section are satisfied, the allocation of nonrecourse deductions is deemed to be in accordance with the partners' interests in the partnership. The allocation of the nonrecourse deductions 75 percent to LP and 25 percent to GP (or in any other ratio between 90 percent to LP/10 percent to GP and 50 percent of LP/50 percent to GP) also would satisfy requirement (2) of paragraph (e) of this section.

(iii) *Allocation of nonrecourse deductions that fails reasonable consistency requirement.* Assume instead that the partnership agreement provides that LP will be allocated 99 percent, and GP 1 percent, of all nonrecourse deductions of the partnership. Allocating nonrecourse deductions this way does not satisfy requirement (2) of paragraph (e) of this section because the allocations are not reasonably consistent with allocations, having substantial economic effect, of any other significant partnership item attributable to the building. Therefore, the allocation of nonrecourse deductions will be disregarded, and the nonrecourse deductions of the partnership will be reallocated according to the partners' overall economic interests in the partnership, determined under § 1.704–1(b)(3)(ii).

(iv) *Capital contribution to pay down nonrecourse debt.* At the beginning of the partnership's fourth taxable year, LP contributes $144,000 and GP contributes $16,000 of addition capital to the partnership, which the partnership immediately uses to reduce the amount of its nonrecourse liability from $800,000 to $640,000. In addition, in the partnership's fourth taxable year, it generates rental income of $95,000, operating expenses of $10,000, interest expense of $84,000 (consistent with the debt reduction), and a depreciation deduction of $90,000, resulting in a net taxable loss of $89,000. If the partnership were to dispose of the building in full satisfaction of the nonrecourse liability at the end of that year, it would realize no gain ($640,000 amount realized less $640,000 adjusted tax basis). Therefore, the amount of partnership minimum gain at the end of the year is zero, which represents a net decrease in partnership minimum gain of $70,000 during the year. LP's and GP's shares of this net decrease are $63,000 and $7,000 respectively, so that at the end of the partnership's fourth taxable year, LP's and GP's shares of partnership minimum gain are zero. Although there has been a net decrease in partnership minimum gain, pursuant to paragraph (f)(3) of this section LP and GP are not subject to a minimum gain chargeback.

	LP	GP
Capital account at end of year 3	($49,500)	($5,500)
Plus: contribution	144,000	16,000
Less: net loss in year 4	(62,100)	(6,900)
Capital account at end of year 4	32,400	3,600
Minimum gain chargeback carryforward	0	0

(v) *Loans of unequal priority* Assume instead that the building acquired by the partnership is secured by a $700,000 nonrecourse loan and a $100,000 recourse loan, subordinate in priority to the nonrecourse loan. Under paragraph (d)(2) of this section, $700,000 of the adjusted basis of the building at the end of the partnership's third taxable year is allocated to the nonrecourse liability (with the remaining $30,000 allocated to the recourse liability) so that if the partnership disposed of the building in full satisfaction of the nonrecourse liability at the end of the year, it would realize no gain (700,000 amount realized less $700,000 adjusted tax basis). Therefore, there is no minimum gain (or increase in minimum gain) at the end of the partnership's third taxable year. If, however, the $700,000 nonrecourse loan were subordinate in priority to the $100,000 recourse loan, under paragraph (d)(2) of this section, the first $100,000 of adjusted tax basis in the building would be allocated to the recourse liability, leaving only $630,000 of the adjusted basis of the building to be allocated to the $700,000 nonrecourse loan. In that case, the balance of the $700,000 nonrecourse liability would exceed the adjusted tax basis of the building by $70,000, so that there would be $70,000 of minimum gain (and a $70,000 increase in partnership minimum gain) in the partnership's third taxable year.

(vi) *Nonrecourse borrowing; distribution of proceeds in subsequent year.* The partnership obtains an additional nonrecourse loan of $200,000 at the end of its fourth taxable year, secured by a second mortgage on the building, and distributes $180,000 of this cash to its partners at the beginning of its fifth taxable year. In addition, in its fourth and fifth taxable years, the partnership again

generates rental income of $95,000, operating expenses of $10,000, interest expense of $80,000 ($100,000 in the fifth taxable year reflecting the interest paid on both liabilities), and a depreciation deduction of $90,000, resulting in a net taxable loss of $85,000 ($105,000 in the fifth taxable year reflecting the interest paid on both liabilities). The partnership has distributed its $5,000 of operating cash flow in each year (95,000 of rental income less $10,000 of operating expense and $80,000 of interest expenses) to LP and GP at the end of each year. If the partnership were to dispose of the building in full satisfaction of both nonrecourse liabilities at the end of its fourth taxable year, the partnership would realize $360,000 of gain ($1,000,000 amount realized less $640,000 adjusted tax basis). Thus, the net increase in partnership minimum gain during the partnership's fourth taxable year is $290,000 ($360,000 of minimum gain at the end of the fourth year less $70,000 of minimum gain at the end of the third year). Because the partnership did not distribute any of the proceeds of the loan it obtained in its fourth year during that year, the potential amount of partnership nonrecourse deductions for that year is $290,000. Under paragraph (c) of this section, if the partnership had distributed the proceeds of that loan to its partners at the end of its fourth year, the partnership's nonrecourse deductions for that year would have been reduced by the amount of that distribution because of the proceeds of that loan are allocable to an increase in partnership minimum gain under paragraph (h)(1) of this section. Because the nonrecourse deductions of $290,000 for the partnership's fourth taxable year exceed its total deductions for that year, all $180,000 of the partnership's deductions for that year are treated as nonrecourse deductions, and the $110,000 excess nonrecourse deductions are treated as an increase in partnership minimum gain in the partnership's fifth taxable year under paragraph (c) of this section.

	LP	GP
Capital account at end of year 3 (including cash flow distributions)	($63,000)	($7,000)
Plus: rental income in year 4	85,500	9,500
Less: nonrecourse deductions in year 4	(162,000)	(18,000
Less: cash flow distributions in year 4	(4,500)	(500)
Capital account at end of year 4	(144,000)	(16,000)

At the end of the partnership's fourth taxable year, LP's and GP's shares of partnership minimum gain are $225,000 and $25,000, respectively (because the $110,000 excess of nonrecourse deductions is carried forward to the next year). If the partnership were to dispose of the building in full satisfaction of the nonrecourse liabilities at the end of its fifth taxable year, the partnership would realize $450,000 of gain (1,000,000 amount realized less 550,000 adjusted tax basis). Therefore, the net increase in partnership minimum gain during the partnership's fifth taxable year is $200,000 ($110,000 deemed increase plus the $90,000 by which minimum gain at the end of the fifth year exceeds minimum gain at the end of the fourth year ($450,000 less $360,000)). At the beginning of its fifth year, the partnership distributes $180,000 of the loan proceeds (retaining $20,000 to pay the additional interest expense). Under paragraph (h) of this section, the first $110,000 of this distribution (an amount equal to the deemed increase in partnership minimum gain for the year) is considered allocable to an increase in partnership minimum gain for the year. As a result, the amount of nonrecourse deductions for the partnership's fifth taxable year is $90,000 (200,000 net increase in minimum gain less $110,000 distribution of nonrecourse liability proceeds allocable to an increase in partnership minimum gain), and the nonrecourse deductions consist solely of the $90,000 depreciation deduction allowable with respect to the building. As a result of the distributions during the partnership's fifth taxable year, the total distributions to the partners over the partnership's life equal $205,000. Therefore, the last $5,000 distributed to the partners during the fifth year will be divided equally between them under the partnership agreement. Thus, out of the $185,000 total distribution during the partnership's fifth taxable year, the first 180,000 is distributed 90 percent to LP and 10 percent to GP, and the last $5,000 is divided equally between them.

	LP	GP
Capital account at end of year 4	($144,000)	($16,000)
Less: net loss in year 5 (without nonrecourse deductions)	(13,500)	(1,500)
Less: nonrecourse deductions in year 5	(81,000)	(9,000)
Less: distribution of loan proceeds	(162,000)	(18,000)
Less: cash flow distribution in year 5	(2,500)	(2,500)
Capital account at end of year 5	(403,000)	(47,000)

At the end of the partnership's fifth taxable year, LP's share of partnership minimum gain is $405,000 ($225,000 share of minimum gain at the end of the fourth year plus $81,000 of nonrecourse deductions for the fifth year and a $99,000 distribution of nonrecourse liability proceeds that are allocable to an increase in minimum gain) and GP's share of partnership minimum gain is $45,000 ($25,000 share of minimum gain at the end of the fourth year plus $9,000 of nonrecourse deductions for the fifth year and an $11,000 distribution of nonrecourse liability proceeds that are allocable to an increase in minimum gain).

(vii) *Partner guarantee of nonrecourse debt.* LP and GP personally guarantee the "first" $100,000 of the $800,000 nonrecourse loan (*i.e.*, only if the building is worth less than $100,000 will they be called upon to make up any deficiency). Under paragraph (d)(2) of this section, only $630,000 of the adjusted tax basis of the building is allocated to the $700,000 nonrecourse portion of the loan because the collateral will be applied first to satisfy the $100,000 guaranteed portion, making it superior in priority to the remainder of the loan. On the other hand, if LP and GP were to guarantee the "last" $100,000 (*i.e.*, if the building is worth less than $800,000, they will be called upon to make up the deficiency up to $100,000), $700,000 of the adjusted tax basis of the building would be allocated to the $700,000 nonrecourse portion of the loan because the guaranteed portion would be inferior in priority to it.

(viii) *Partner nonrecourse debt.* Assume instead that the $800,000 loan is made by LP, the limited partner. Under paragraph (b)(4) of this section, the $800,000 obligation does not constitute a nonrecourse liability of the partnership for purposes of this section because LP, a partner, bears the economic risk of loss for that loan within the meaning of § 1.752–2. Instead, the $800,000 loan constitutes a partner nonrecourse debt under paragraph (b)(4) of this section. In the partnership's third taxable year, partnership minimum gain would have increased by $70,000 if the debt were a nonrecourse liability of the partnership. Thus, under paragraph (i)(3) of this section, there is a net increase of $70,000 in the minimum gain attributable to the $800,000 partner nonrecourse debt for the partnership's third taxable year, and $70,000 of the $90,000 depreciation deduction from the building for the partnership's third taxable year constitutes a partner nonrecourse deduction with respect to the debt. See paragraph (i)(4) of this section. Under paragraph (i)(2) of this section, this partner nonrecourse deduction must be allocated to LP, the partner that bears the economic risk of loss for that liability.

(ix) *Nonrecourse debt and partner nonrecourse debt of differing priorities.* As in *Example* 1 (viii) of this paragraph (m), the $800,000 loan is made to the partnership by LP, the limited partner, but the loan is a purchase money loan that "wraps around" a $700,000 underlying nonrecourse note (also secured by the building) issued by LP to an unrelated person in connection with LP's acquisition of the building. Under these circumstances, LP bears the economic risk of loss with respect to only $100,000 of the liability within the meaning of § 1.752–2. See § 1.752–2(f) (*Example* 6). Therefore, for purposes of paragraph (d) of this section, the $800,000 liability is treated as a $700,000 nonrecourse liability of the partnership and a $100,000 partner nonrecourse debt (inferior in priority to the $700,000 liability) of the partnership for which LP bears the economic risk of loss. Under paragraph (i)(2) of this section, $70,000 of the $90,000 depreciation deduction realized in the partnership's third taxable year constitutes a partner nonrecourse deduction that must be allocated to LP.

Example 2. *Netting of increases and decreases in partnership minimum gain.* For *Example* 2 unless otherwise provided, the

following facts are assumed. X and Y form a general partnership to acquire and operate residential real properties. Each partner contributes $150,000 to the partnership. The partnership obtains a $1,500,000 nonrecourse loan and purchases 3 apartment buildings (on leased land) for $720,000 ("Property A"), $540,000 ("Property B"), and $540,000 ("Property C"). The nonrecourse loan is secured only by the 3 buildings, and no principal payments are due for 5 years. In each of the partnership's first 3 taxable years, it generates rental income of $225,000, operating expenses (including land lease payments) of $50,000, interest expense of $175,000, and depreciation deductions on the 3 properties of $150,000 ($80,000 on Property A and $45,000 on each of Property B and Property C), resulting in a net taxable loss of $150,000 in each of those years. The partnership makes no distributions to X or Y.

(i) *Calculation of net increases and decreases in partnership minimum gain.* If the partnership were to dispose of the 3 apartment buildings in full satisfaction of its nonrecourse liability at the end of its third taxable year, it would realize $150,000 of gain ($1,500,000 amount realized less $1,350,000 adjusted tax basis). Because the amount of partnership minimum gain at the end of that year (and the net increase in partnership minimum gain during that year) is $150,000, the amount of partnership nonrecourse deductions for that year is $150,000, consisting of depreciation deductions allowable with respect to the 3 apartment buildings of $150,000. The result would be the same if the partnership obtained 3 separate nonrecourse loans that were "cross-collateralized" (*i.e.*, if each separate loan were secured by all 3 of the apartment buildings).

(ii) *Netting of increases and decreases in partnership minimum gain when there is a disposition.* At the beginning of the partnership's fourth taxable year, the partnership (with the permission of the nonrecourse lender) disposes of Property A for $835,000 and uses a portion of the proceeds to repay $600,000 of the nonrecourse liability (the principal amount attributable to Property A), reducing the balance to $900,000. As a result of the disposition, the partnership realizes gain of $295,000 ($835,000 amount realized less $540,000 adjusted tax basis). If the disposition is viewed in isolation, the partnership has generated minimum gain of $60,000 on the sale of Property A ($600,000 of debt reduction less $540,000 adjusted tax basis). However, during the partnership's fourth taxable year it also generates rental income of $135,000, operating expenses of $30,000, interest expense of $105,000, and depreciation deductions of $90,000 ($45,000 on each remaining building). If the partnership were to dispose of the remaining two buildings in full satisfaction of its nonrecourse liability at the end of the partnership's fourth taxable year, it would realize gain of $180,000 ($900,000 amount realized less $720,000 aggregate adjusted tax basis), which is the amount of partnership minimum gain at the end of the year. Because the partnership minimum gain increased from $150,000 to $180,000 during the partnership's fourth taxable year, the amount of partnership nonrecourse deductions for that year is $30,000, consisting of a ratable portion of depreciation deductions allowable with respect to the two remaining apartment buildings. No minimum gain chargeback is required for the taxable year, even though the partnership disposed of one of the properties subject to the nonrecourse liability during the year, because there is no net decrease in partnership minimum gain for the year. See paragraph (f)(1) of this section.

Example 3. Nonrecourse deductions and partnership minimum gain before third partner is admitted. For purposes of Example 3, unless otherwise provided, the following facts are assumed. Additional facts are given in each of Examples 3 (ii), (iii), and (iv). A and B form a limited partnership to acquire and lease machinery that is 5-year recovery property. A, the limited partner, and B, the general partner, contribute $100,000 each to the partnership, which obtains an $800,000 nonrecourse loan and purchases the machinery for $1,000,000. The nonrecourse loan is secured only by the machinery. The principal amount of the loan is to be repaid $50,000 per year during each of the partnership's first 5 taxable years, with the remaining $550,000 of unpaid principal due on the first day of the partnership's sixth taxable year. The partnership agreement contains all of the provisions required by paragraph (e) of this section, and, as of the end of each partnership taxable year discussed herein, the items described in § 1.704-1(b)(2)(ii)—(*d*)(*4*), (*5*), and (*6*) are not reasonably expected to cause or increase a deficit balance in A's or B's capital account. The partnership agreement provides that, except as otherwise required by its qualified income offset and minimum gain chargeback provisions, all partnership items will be allocated equally between A and B. Finally, the partnership agreement provides that all distributions, other than distributions in liquidation of the partnership or of a partner's interest in the partnership, will be made equally between A and B. In the partnership's first taxable year it generates rental income of $130,000, interest expense of $80,000, and a depreciation deduction of $150,000, resulting in a net taxable loss of $100,000. In addition, the partnership repays $50,000 of the nonrecourse liability, reducing that liability to $750,000. Allocations of these losses equally between A and B have substantial economic effect.

	A	B
Capital account on formation	$100,000	$100,000
Less: net loss in year 1	(50,000)	(50,000)
Capital account at end of year 1	50,000	50,000

In the partnership's second taxable year, it generates rental income of $130,000, interest expense of $75,000, and a depreciation deduction of $220,000, resulting in a net taxable loss of $165,000. In addition, the partnership repays $50,000 of the nonrecourse liability, reducing that liability to $700,000, and distributes $2,500 of cash to each partner. If the partnership were to dispose of the machinery in full satisfaction of the nonrecourse liability at the end of that year, it would realize $70,000 of gain ($700,000 amount realized less $630,000 adjusted tax basis). Therefore, the amount of partnership minimum gain at the end of that year (and the net increase in partnership minimum gain during the year) is $70,000, and the amount of partnership nonrecourse deductions for the year is $70,000. The partnership nonrecourse deductions for its second taxable year consist of $70,000 of the depreciation deductions allowable with respect to the machinery. Pursuant to the partnership agreement, all partnership items comprising the net taxable loss of $165,000, including the $70,000 nonrecourse deduction, are allocated equally between A and B. The allocation of these items, other than the nonrecourse deductions, has substantial economic effect.

	A	B
Capital account at end of year 1	$50,000	$50,000
Less: net loss in year 2 (without nonrecourse deductions)	(47,500)	(47,500)
Less: nonrecourse deductions in year 2	(35,000)	(35,000)
Less: distribution	(2,500)	(2,500)
Capital account at end of year 2	(35,000)	(35,000)

(i) *Calculation of nonrecourse deductions and partnership minimum gain.* Because all of the requirements of paragraph (e) of this section are satisfied, the allocation of nonrecourse deductions is deemed to be made in accordance with the partners' interests in the partnership. At the end of the partnership's second taxable year, A's and B's shares of partnership minimum gain are $35,000 each. Therefore, pursuant to paragraph (g)(1) of this section, A and B are treated as obligated to restore deficit balances in their capital accounts of $35,000 each. If the partnership were to dispose of the machinery in full satisfaction of the nonrecourse liability at the beginning of the partnership's third taxable year (and had no other economic activity in that year), the partnership minimum gain would be decreased from $70,000 to zero. A's and B's shares of that net decrease would be $35,000 each. Upon that disposition, the minimum gain chargeback would require that A and B each be allocated $35,000 of that gain before any other allocation is made under section 704 (b) with respect to partnership items for the partnership's third taxable year.

(ii) *Nonrecourse deductions and restatement of capital accounts.* (a) *Additional facts.* C is admitted to the partnership at the beginning of the partnership's third taxable year. At the time of C's admission, the fair market value of the machinery is $900,000. C contributes $100,000 to the partnership (the partnership invests $95,000 of this in undeveloped land and holds the other $5,000 in cash) in exchange for an interest in the partnership. In connection with C's admission to the partnership, the partnership's machinery is revalued on the

partnership's books to reflect its fair market value of $900,000. Pursuant to § 1.704–1(b)(2)(iv)(*f*), the capital accounts of A and B are adjusted upwards to $100,000 each to reflect the revaluation of the partnership s machinery. This adjustment reflects the manner in which the partnership gain of $270,000 ($900,000 fair market value minus $630,000 adjusted tax basis) would be shared if the machinery were sold for its fair market value immediately prior to C's admission to the partnership.

	A	B
Capital account before C's admission	($35,000)	($35,000)
Deemed sale adjustment	135,000	135,000
Capital account adjusted for C's admission	100,000	100,000

The partnership agreement is modified to provide that, except as otherwise required by its qualified income offset and minimum gain chargeback provisions, partnership income, gain, loss, and deduction, as computed for book purposes, are allocated equally among the partners, and those allocations are reflected in the partners' capital accounts. The partnership agreement also is modified to provide that depreciation and gain or loss, as computed for tax purposes, with respect to the machinery will be shared among the partners in a manner that takes account of the variation between the property's $630,000 adjusted tax basis and its $900,000 book value, in accordance with § 1.704–1(b)(2)(iv)(*f*) and the special rule contained in § 1.704–1(b)(4)(i).

(b) *Effect of revaluation.* Because the requirements of § 1.704–1(b)(2)(iv)(*g*) are satisfied, the capital accounts of the partners (as adjusted) continue to be maintained in accordance with § 1.704–1(b)(2)(iv). If the partnership were to dispose of the machinery in full satisfaction of the nonrecourse liability immediately following the revaluation of the machinery, it would realize no book gain ($700,000 amount realized less $900,000 book value). As a result of the revaluation of the machinery upward by $270,000, under part (i) of paragraph (d)(4) of this section, the partnership minimum gain is reduced from $70,000 immediately prior to the revaluation to zero; but under part (ii) of paragraph (d)(4) of this section, the partnership minimum gain is increased by the $70,000 decrease arising solely from the revaluation. Accordingly, there is no net increase or decrease solely on account of the revaluation, and so no minimum gain chargeback is triggered. All future nonrecourse deductions that occur will be the nonrecourse deductions as calculated for book purposes, and will be charged to all 3 partners in accordance with the partnership agreement. For purposes of determining the partners' shares of minimum gain under paragraph (g) of this section, A and B's shares of the decrease resulting from the revaluation are $35,000 each. However, as illustrated below, under section 704(c) principles, the tax capital accounts of A and B will eventually be charged $35,000 each, reflecting their 50 percent shares of the decrease in partnership minimum gain that resulted from the revaluation.

(iii) *Allocation of nonrecourse deductions following restatement of capital accounts.* (a) *Additional facts.* During the partnership's third taxable year, the partnership generates rental income of $130,000, interest expense of $70,000, a depreciation deduction of $210,000, and a book depreciation deduction (attributable to the machinery) of $300,000. As a result, the partnership has a net taxable loss of $150,000 and a net book loss of $240,000. In addition, the partnership repays $50,000 of the nonrecourse liability (after the data of C's admission), reducing the liability to $650,000 and distributes $5,000 of cash to each partner.

(b) *Allocations.* If the partnership were to dispose of the machinery in full satisfaction of the nonrecourse liability at the end of the year, $50,000 of book gain would result ($650,000 amount realized less $600,000 book basis). Therefore, the amount of partnership minimum gain at the end of the year is $50,000, which represents a net decrease in partnership minimum gain of $20,000 during the year (This is so even though there would be an increase in partnership minimum gain in the partnership's third taxable year if minimum gain were computed with reference to the adjusted tax basis of the machinery.) Nevertheless, pursuant to paragraph (d)(4) of this section, the amount of nonrecourse deductions of the partnership for its third taxable year is $50,000 (the net increase in partnership minimum gain during the year determined by adding back the $70,000 decrease in partnership minimum gain attributable to the revaluation of the machinery to the $20,000 net decrease in partnership minimum gain during the year). The $50,000 of partnership nonrecourse deductions for the year consist of book depreciation deductions allowable with respect to the machinery of $50,000. Pursuant to the partnership agreement all partnership items comprising the net book loss of $240,000, including the $50,000 nonrecourse deduction, are allocated equally among the partners. The allocation of these items, other than the nonrecourse deductions, has substantial economic effect. Consistent with the special partners' interests in the partnership rule contained in § 1.704–1(b)(4)(i), the partnership agreement provides that the depreciation deduction for tax purposes of $210,000 for the partnership's third taxable year is, in accordance with section 704(c) principles, shared $55,000 to A, $55,000 to B, and $100,000 to C.

	A		B		C	
	Tax	Book	Tax	Book	Tax	Book
Capital account at beginning of year 3	(35,000)	$100,000	(35,000)	$100,0000	$100,000	$100,000
Less: nonrecourse deductions	(9,166)	(16,666)	(9,166)	(16,666)	(16,666)	(16,666)
Less: items other than nonrecourse deductions in year 3	(25,834)	(63,334)	(25,834)	(63,334)	(63,334)	(63,334)
Less: distribution	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)
Capital account at end of year 3	($75,000)	$15,000	($75,000)	$15,000	$15,000	$15,000

Because the requirements of paragraph (e) of this section are satisfied, the allocation of the nonrecourse deduction is deemed to be made in accordance with the partners' interests in the partnership. At the end of the partnership's third taxable year, A's, B's, and C's shares of partnership minimum gain are $16,666 each.

(iv) *Subsequent allocation of nonrecourse deductions following restatement of capital accounts.* (a) *Additional facts.* The partners' capital accounts at the end of the second and third taxable years of the partnership are as stated in *Example* 3(iii) of this paragraph (m). In addition, during the partnership's fourth taxable year the partnership generates rental income of $130,000, interest expense of $65,000, a tax depreciation deduction of $210,000, and a book depreciation deduction (attributable to the machinery) of $300,000. As a result, the partnership has a net taxable loss of $145,000 and a net book loss of $235,000. In addition, the partnership repays $50,000 of the nonrecourse liability, reducing that liability to $600,000, and distributes $5,000 of cash to each partner.

(b) *Allocations.* If the partnership were to dispose of the machinery in full satisfaction of the nonrecourse liability at the end of the fourth year, $300,000 of book gain would result ($600,000 amount realized less $300,000 book value). Therefore, the amount of partnership minimum gain as of the end of the year is $300,000, which represents a net increase in partnership minimum gain during the year of $250,000. Thus, the amount of partnership nonrecourse deductions for that year equals $250,000, consisting of book depreciation deductions of $250,000. Pursuant to the partnership agreement, all partnership items comprising the net book loss of $235,000, including the $250,000 nonrecourse deduction, are allocated equally among the partners. That allocation of all items, other than the nonrecourse deductions, has substantial economic effect. Consistent with the special partners' interests in the partnership rule contained in § 1.704–1(b)(4)(i), the partnership agreement provides that the depreciation deduction for tax purposes of $210,000 in the partnership's fourth taxable year is, in accordance with

section 704(c) principles, allocated $55,000 to A, $55,000 to B, and $100,000 to C.

	A		B		C	
	Tax	Book	Tax	Book	Tax	Book
Capital account at end year 3	(75,000)	$15,000	(75,000)	$15,000	$15,000	$15,000
Less: nonrecourse deductions	(45,833)	(83,333)	(45,833)	(83,333)	(83,333)	(83,333)
Plus: items other than nonrecourse deduction in year 4	12,499	5,000	12,499	5,000	5,000	5,000
Less: distribution	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)
Capital account at end of year 4	($113,334)	($68,333)	($113,333)	($68,333)	($68,333)	($68,333)

The allocation of the $250,000 nonrecourse deduction equally among A, B, and C satisfies requirement (2) of paragraph (e) of this section. Because all of the requirements of paragraph (e) of this section are satisfied, the allocation is deemed to be in accordance with the partners' interests in the partnership. At the end of the partnership's fourth taxable year A's, B's, and C's shares of partnership minimum gain are $100,000 each.

(v) *Disposition of partnership property following restatement of capital accounts.* (a) *Additional facts.* The partners' capital accounts at the end of the fourth taxable year of the partnership are as stated above in (iv). In addition, at the beginning of the partnership's fifth taxable year it sells the machinery for $650,000 (using $600,000 of the proceeds to repay the nonrecourse liability), resulting in a taxable gain of $440,000 ($650,000 amount realized less $210,000 adjusted tax basis) and a book gain of $350,000 ($650,000 amount realized less $300,000 book basis). The partnership has no other items of income, gain, loss, or deduction for the year.

(b) *Effect of disposition.* As a result of the sale, partnership minimum gain is reduced from $300,000 to zero, reducing A's, B's, and C's shares of partnership minimum gain to zero from $100,000 each. The minimum gain chargeback requires that A, B, and C each be allocated $100,000 of that gain (an amount equal to each partner's share of the net decrease in partnership minimum gain resulting from the sale) before any allocation is made to them under section 704(b) with respect to partnership items for the partnership's fifth taxable year. Thus, the allocation of the first $300,000 of book gain $100,000 to each of the partners is deemed to be in accordance with the partners' interests in the partnership under paragraph (e) of this section. The allocation of the remaining $50,000 of book gain equally among the partners has substantial economic effect. Consistent with the special partners' interests in the partnership rule contained in § 1.704–1(b)(4)(i), the partnership agreement provides that the $440,000 taxable gain is, in accordance with section 704(c) principles, allocated $161,667 to A, $161,667 to B, and $116,666 to C.

	A		B		C	
	Tax	Book	Tax	Book	Tax	Book
Capital account at end of year 4	($113,334)	($68,333)	($113,334)	($68,333)	($68,333)	($68,333)
Plus: minimum gain chargeback	138,573	100,000	138,573	100,000	100,000	100,000
Plus: additional gain	23,094	16,666	23,094	16,666	16,666	16,666
Capital account before liquidation	$48,333	$48,333	$48,333	$48,333	$48,333	$48,333

Example (4). *Allocations of increase in partnership minimum gain among partnership properties.* For *Example* 4, unless otherwise provided, the following facts are assumed. A partnership owns 4 properties, each of which is subject to a nonrecourse liability of the partnership. During a taxable year of the partnership, the following events take place. First, the partnership generates a depreciation deduction (for both book and tax purposes) with respect to Property W of $10,000 and repays $5,000 of the nonrecourse liability secured only by that property, resulting in an increase in minimum gain with respect to that liability of $5,000. Second, the partnership generates a depreciation deduction (for both book and tax purposes) with respect to Property X of $10,000 and repays none of the nonrecourse liability secured by that property, resulting in an increase in minimum gain with respect to that liability of $10,000. Third, the partnership generates a depreciation deduction (for both book and tax purposes) of $2,000 with respect to Property Y and repays $11,000 of the nonrecourse liability secured only by that property, resulting in a decrease in minimum gain with respect to that liability of $9,000 (although at the end of that year, there remains minimum gain with respect to that liability). Finally, the partnership borrows $5,000 on a nonrecourse basis, giving as the only security for that liability Property Z, a parcel of undeveloped land with an adjusted tax basis (and book value) of $2,000, resulting in a net increase in minimum gain with respect to that liability of $3,000.

(i) *Allocation of increase in partnership minimum gain.* The net increase in partnership minimum gain during that partnership taxable year is $9,000, so that the amount of nonrecourse deductions of the partnership for that taxable year is $9,000. Those nonrecourse deductions consist of $3,000 of depreciation deductions with respect to Property W and $6,000 of depreciation deductions with respect to Property X. See paragraph (c) of this section. The amount of nonrecourse deductions consisting of depreciation deductions is determined as follows. With respect to the nonrecourse liability secured by Property Z, for which there is no depreciation deduction, the amount of depreciation deductions that constitutes nonrecourse deductions is zero. Similarly, with respect to the nonrecourse liability secured by Property Y, for which there is no increase in minimum gain, the amount of depreciation deductions that constitutes nonrecourse deductions is zero. With respect to each of the nonrecourse liabilities secured by Properties W and X, which are secured by property for which there are depreciation deductions and for which there is an increase in minimum gain, the amount of depreciation deductions that constitutes nonrecourse deductions is determined by the following formula:

net increase in partnership minimum gain × total depreciation deductions on the specific property securing the nonrecoure liability, to the extent of the minimum gain on that liability ÷ total depreciation deductions on all properties securing nonrecourse liabilities with minimum gain, to the extent of the aggregate increase in minimum gain on all those liabilities

Thus, for the liability secured by Property W, the amount is $9,000 times $5,000/$15,000, or $3,000. For the liability secured by Property X, the amount is $9,000 times $10,000/$15,000, or $6,000. (If one depreciable property secured two partnership nonrecourse liabilities, the amount of depreciation or book depreciation with respect to that property would be allocated among those liabilities in accordance with the method by which adjusted basis is allocated under paragraph (d)(2) of this section).

(ii) *Alternative allocation of increase in partnership minimum gain among partnership properties.* Assume instead that the loan secured by Property Z is $15,000 (rather than $5,000), resulting in a net

increase in minimum gain with respect to that liability of $13,000. Thus, the net increase in partnership minimum gain is $19,000, and the amount of nonrecourse deductions of the partnership for that taxable year is $19,000. Those nonrecourse deductions consist of $5,000 of depreciation deductions with respect to Property W, $10,000 of depreciation deductions with respect to Property X, and a pro rata portion of the partnership's other items of deduction, loss, and section 705(a)(2)(B) expenditure for that year. The method for computing the amounts of depreciation deductions that constitute nonrecourse deductions is the same as in (i) of this *Example* 4 for the liabilities secured by Properties Y and Z. With respect to each of the nonrecourse liabilities secured by Properties W and X, the amount of depreciation deductions that constitutes nonrecourse deductions equals the total depreciation deductions with respect to the partnership property securing that particular liability to the extent of the increase in minimum gain with respect to that liability.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 11. The authority for part 602 continues to read as follows:

Authority: (26 U.S.C. 7805).

§ 602.101 [Amended]

Par. 12. Section 602.101(c) is amended by removing the citation "1.704–1T * * * 1545–1090" and adding the following citation to read as follows:

"1.704–2 * * * 1545–1090.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved: December 12, 1991.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91–30843 Filed 12–26–91; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Parts 301 and 602

[T.D. 8383]

RIN 1545–AP34

Disclosure of Tax Return Information for Purposes of Quality or Peer Reviews; Due to Incapacity or Death of Tax Return Preparer

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations § 301.7216–2(o) prescribing the circumstances under which tax return information may be disclosed for purposes of conducting quality or peer reviews. These regulations are necessary to provide tax return preparers with the guidance needed to comply with changes to the applicable law made by the Omnibus Budget Reconciliation Act of 1989. This document also contains final regulations § 301.7216–2(p) regarding disclosures necessitated by a tax return preparer's incapacity or death.

EFFECTIVE DATE: These regulations are effective on December 28, 1990.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:CORP:T:R), or by telephone at 202–566–5985 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980, (44 U.S.C. 3504(h)), under control number 1545–1209. The estimated annual burden per recordkeeper varies from 15 minutes to 2 hours, depending on individual circumstances, with an estimated average of 1 hour.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual recordkeepers may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224, with copies to the Office of Management and Budget, Attention: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

These regulations were published in temporary and proposed form in the **Federal Register** on December 28, 1990 (55 FR 53295, 55 FR 53313). This document adds rules under section 7216(b)(3) of the Internal Revenue Code of 1986 to the Regulations on Procedure and Administration (26 CFR part 301). A number of comments were received in response to the notice of proposed rulemaking. A public hearing was held on June 3, 1991. After consideration of the public comments received, the regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

The explanation contained in the preamble to the temporary regulations applies equally to the final regulations except as described below.

The temporary regulations define a quality or peer review as a review that is undertaken to evaluate, monitor, and improve the quality and accuracy of a tax return preparer's tax preparation services. Some commentators suggested that the definition is too broad and might defeat the statutory purpose of maintaining the confidentiality of tax return information. Other commentators suggested that this definition is too restrictive. They noted that some preparers must undergo a review of their auditing and accounting services to satisfy government concerns. While these reviews are only incidentally related to tax return preparation, tax return information sometimes must be disclosed to properly complete the review. The commentators are concerned that the definition in the temporary regulations will not allow these reviews to be accomplished.

The final regulations slightly expand the definition of a quality or peer review to include accounting and auditing services. It is believed that concerns about unauthorized disclosures or uses of tax return information are adequately addressed by the safeguards contained in the regulations together with the criminal and civil penalties of sections 7216(a) and 6713 of the Code. The safeguards contained in the regulations include: (a) Limiting the scope of reviews to address only tax return preparation, accounting, and auditing services; (b) requiring that any taxpayer identifying information be excised from any final evaluative reports that may be accessible to anyone other than the reviewer or the preparer being reviewed; (c) treating any person who obtains tax return information in the course of a review as a tax return preparer for purposes of sections 7216(a) and 6713(a) of the Code; and (d) limiting those who may conduct reviews to persons who are subject to the provisions of Treasury Department Circular 230 ("Circular 230").

Persons permitted to conduct quality or peer reviews under the temporary regulations (i.e. persons subject to Circular 230) are attorneys, certified public accountants, enrolled agents, and enrolled actuaries who are not under suspension or disbarment from practice before the Service. Some commentators suggested that the classes of persons permitted to conduct a quality or peer review be expanded to include non-

certified, licensed public accountants ("LPAs") who are neither enrolled agents, nor otherwise eligible to practice before the Service. Unenrolled LPAs are not subject to the provisions of Circular 230. The Service believes that permitting only persons subject to Circular 230 to conduct a quality or peer review helps to prevent unauthorized disclosures of tax return information. Accordingly, the final regulations do not adopt this suggestion.

Finally, some commentators suggested that the temporary regulations should be revised to permit franchisees to disclose tax return information to their franchisor for purposes that are unrelated to a quality or peer review. Along similar lines, one commentator suggested that a franchisor's employees who are not eligible to practice before the Service should nonetheless be permitted to conduct quality or peer reviews. Neither suggestion was adopted. The first suggestion raised concerns that were not within the scope of these regulations. The second suggestion would not further the statutory purpose of maintaining the confidentiality of tax return information.

Special Analyses

These rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this Treasury decision was preceded by a notice of proposed rulemaking that solicited public comments, the notice was not required by 5 U.S.C. 553 since the regulations proposed in that notice and adopted by this Treasury decision are interpretive. Therefore, a final Regulatory Impact Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Internal Revenue Code, a copy of the temporary and proposed regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is David L. Meyer, Office of Assistant Chief Counsel, Income Tax and Accounting, Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Disclosure of information, Employment taxes, Estate taxes, Excise taxes, Filing requirements, Gift tax, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set forth in the preamble, 26 CFR parts 301 and 602 are amended as follows.

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority for part 301 is amended by adding the following citation to read:

Authority: Sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805 * * * Section 301.7216–2, paragraphs (o) and (p) also issued under 26 U.S.C. 7216(b)(3).

Par. 2. The authority citation located at the end of § 301.7216–2 is removed and § 301.7216–2 is amended by adding paragraphs (o) and (p) to read as follows:

§ 301.7216–2 Disclosure or use without formal consent of taxpayer.

* * * * *

(o) *Disclosure or use of information for quality or peer reviews.* The provisions of section 7216(a) and § 301.7216–1 do not apply to any disclosure of tax return information permitted by this paragraph (o) made after December 28, 1990. Tax return information may be disclosed for the purpose of a quality or peer review to the extent necessary to accomplish the review. A quality or peer review is a review that is undertaken to evaluate, monitor, and improve the quality and accuracy of a tax return preparer's tax preparation, accounting, or auditing services. A quality or peer review may be conducted only by attorneys, certified public accountants, enrolled agents, and enrolled actuaries who are eligible to practice before the Internal Review Service. See Department of the Treasury Circular 230, 31 CFR part 10. Disclosure of tax return information is also authorized to persons who provide administrative or support services to an individual who is conducting a quality or peer review under this paragraph (o), but only to the extent necessary for the reviewer to conduct the review. Tax return information gathered in conducting a review may be used only for purposes of a review. No tax return information identifying a taxpayer may be disclosed in any evaluative reports or recommendations that may be accessible to any person other than the reviewer or the preparer being reviewed. The preparer being reviewed shall maintain a record of the review including the information reviewed and the identity of the persons conducting the review. After completion of the review, no documents containing information that may identify any taxpayer by name or identification number may be retained by a reviewer or by the reviewer's administrative or support personnel. Any person (including administrative and support personnel) receiving tax return information in connection with a quality or peer review is a tax return preparer for purposes of sections 7216(a) and 6713(a).

(p) *Disclosure of tax return information due to a tax return preparer's incapacity or death.* The provisions of section 7216(a) and § 301.7216–1 do not apply to any disclosure of tax return information permitted by this paragraph (p) made after December 28, 1990. In the event of incapacity or death of a tax return preparer, disclosure of tax return information may be made for the purpose of assisting the tax return preparer or his legal representative (or the representative of a deceased preparer's estate) in operating the business. Any person receiving tax return information under the provisions of this paragraph (p) is a tax return preparer for purposes of sections 7216(a) and 6713(a).

Par. 3. Section 301.7216–2T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority for part 602 continues to read as follows:

Authority: (26 U.S.C. 7805).

Par. 5. The table of OMB Control Numbers in § 602.101 is amended by revising the entry in the table for "§ 301.7216–2T" to read as follows:

"§ 301.7216–2(o) * * * 1545–1209".

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved: December 5, 1991.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91–30712 Filed 12–26–91; 8:45 am]

BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-4088-1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Amendment to an Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is finalizing a proposed amendment to an exclusion previously granted, in March 11, 1988, in response to a petition submitted for the EPA Mobile Incineration System (MIS) in McDowell, Missouri. This exclusion applied to certain wastes that were to be generated by the MIS during the incineration of cancelled 2,4,5-T and Silvex pesticide products. In amending the March 1988 exclusion, the Agency is transferring the exclusion to wastes to be generated by a different incinerator that is owned and operated by Aptus, Incorporated, located in Coffeyville, Kansas. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: December 27, 1991.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW. (room M2427), Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260-9327 for appointments. The reference number for this docket is "F-91-CPAF-FFFFF". The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (703) 920-9810. For technical information concerning this rule, contact Robert Kayser, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-2224.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that: (1) The waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) no other hazardous constituents or factors that could cause the waste to be hazardous are present in the waste at levels of regulatory concern.

B. History of this Rulemaking

In February 1979, the Administrator issued emergency suspension orders and notices of intent to cancel the registration for a number of uses of the pesticides 2,4,5-T and Silvex. Among the products affected by the Administrator's actions were certain 2,4,5-T and Silvex products registered by Union Carbide Corporation. Union Carbide's 2,4,5-T and Silvex registrations were finally cancelled in November 1984. Pursuant to section 19 of FIFRA (prior to its amendment in 1988), upon request, EPA was required to accept for safe disposal Union Carbide's existing stocks of suspended and cancelled 2,4,5-T and Silvex. EPA later accepted title to the cancelled 2,4,5-T and Silvex pesticides stored at the Byers Warehouse in St. Joseph, Missouri.

The Agency originally planned to incinerate these wastes in the EPA Mobile Incineration System (MIS) and, as such, the EPA Releases Control Branch (RCB), Office of Research and Development, submitted a petition and received an exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 for the wastes that would have been generated by the MIS (see 53 FR 31, January 4, 1988, and 53 FR 7903, March 11, 1988). RCB's petition was for an "upfront" exclusion, an exclusion conditioned upon testing the MIS residues, once generated, to ensure that levels of hazardous constituents would not present a threat to human health and the environment.

EPA applied to the state of Missouri for a permit modification to allow the incineration of the cancelled pesticides to proceed. However, the modification was not obtained and the Agency has since dismantled the MIS. The Agency's Superfund contractor entered into a contract with Aptus, Incorporated, to incinerate the same stockpiles of wastes identified in the MIS exclusion.

Aptus petitioned the Agency to amend the MIS exclusion so that the incineration of the cancelled pesticide materials can occur in its own state-of-the-art incinerator located in Coffeyville, Kansas. After evaluating the petition, EPA proposed, on October 25, 1991, to transfer the March 1988 MIS exclusion to wastes that will be generated from Aptus' state-of-the-art incinerator (see 56 FR 55257, October 25, 1991).

This rulemaking addresses public comments received on the proposal and finalizes the proposed decision to amend the March 1988 MIS exclusion and to transfer the exclusion to Aptus, Incorporated.

II. Disposition of Delisting Petition

A. Aptus, Incorporated, Coffeyville, Kansas

1. Petition to Amend 40 CFR Part 261, Appendix IX

Aptus, Incorporated (Aptus), located in Coffeyville, Kansas, is a hazardous waste treatment facility, with a permit under RCRA to store hazardous waste materials. Upon successful completion of a trial burn, Aptus will also have a fully effective permit to incinerate hazardous waste. Aptus petitioned the Agency to amend the March 11, 1988, exclusion previously granted in response to a petition submitted for the EPA MIS in McDowell, Missouri. The MIS exclusion applied to wastes that were to be generated during the incineration of dioxin-contaminated pesticides, listed as hazardous pursuant to 40 CFR 261.3(c)(2)(i). The pesticides, which include 2,4,5-T and Silvex, are presently listed as EPA Hazardous Waste No. F027—Discarded unused formulations containing tri-, tetra-, or pentachlorophenol or discarded unused formulations containing compounds derived from these chlorophenols. The listed constituents of concern for EPA Hazardous Waste No. F027 are tetra-, penta-, and hexachlorodibenzo-p-dioxins; tetra-, penta-, and hexachlordibenzofurans; and tri-, tetra-, and pentachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amines, and other salts (see 40 CFR part 261, appendix VII).

In its petition, Aptus requested that the Agency amend the MIS exclusion so that the incineration of the cancelled pesticide materials can occur in its own, state-of-the-art incinerator located in Coffeyville, Kansas. Aptus also requested that the applicable verification testing requirements, which would have allowed for delisting of incineration residues from the MIS,

continue to apply to the incineration residues generated from its facility. Aptus intends to incinerate the same materials that were covered by the original 1988 exclusion.

In support of its petition, Aptus provided detailed descriptions of its incinerator. Aptus also requested that the Agency rely on petition information submitted for the MIS, in particular, descriptions of the pesticide materials to be incinerated, product specification and material safety data sheets of the pesticides, and the analyses for hazardous constituents completed for the major liquid and solid products.

The Agency reviewed the information submitted by Aptus and based on an assessment of the information provided regarding design and performance capabilities of the incineration system, the Agency believes that the Aptus incinerator is at least as capable as the MIS of generating non-hazardous waste residues from incineration of the pesticide materials. See the RCRA public docket for the proposed amendment for a complete description of each incineration system. EPA proposed to transfer the delisting levels and verification testing requirements developed in 1988 for these wastes with only a few modifications. EPA proposed to lower the delisting level for nickel based on the use of a newer model and health-based level. EPA also proposed to modify several details in the monitoring and testing requirements so that it can continue to verify whether or not the residues from the incinerator meet the delisting levels. EPA is retaining these modifications in today's final rule. For further information on the proposal, see the October 25, 1991 notice.

2. Agency Response to Public Comments

The Agency received comments on the proposed amendment from two interested parties. One commenter supported the Agency's proposed amendment, but felt that the exclusion should not be limited to those materials stored in Byers Warehouse in St. Joseph, Missouri. The commenter believed that the proposed amendment should be applicable to all materials of this type currently held by individuals, private business or governmental bodies.

In response, the Agency notes that the proposed amendment resulted from a delisting petition submitted by Aptus. In its petition, Aptus requested that the Agency amend a previously granted (March 11, 1988) exclusion for wastes that were to be generated by incineration of cancelled pesticide materials stored in Byers Warehouse, using the EPA MIS, so that this exclusion would apply to wastes to be generated from the same materials in its own state-of-the-art incinerator located in Coffeyville, Kansas. Therefore, since the MIS exclusion was limited to only wastes that were to be generated during the incineration of cancelled pesticide materials stored in Byers Warehouse, the proposed amendment also only covered the wastes to be generated from these same materials.

Additionally, before the Agency could consider excluding other similar waste materials, the Agency would require submission of a separate petition which includes waste characterization data (e.g., constituents of concern and their levels in the waste) and waste volume information. Without this information, the Agency cannot determine whether incineration can effectively treat the waste materials and, if treatment is possible, what testing requirements and delisting levels would be appropriate. For example, a waste with higher levels of metals may not be effectively treated by incineration.

The other commenter raised a number of issues concerning the permitting of the incinerator, as well as several concerning the delisting, and requested a public hearing on the proposed amendment. The Agency decided that the issues raised by this commenter did not warrant a public hearing for two reasons. First, many of the issues raised concerned the entirely separate proceedings that led to the decision made by EPA and the State of Kansas to issue the incineration permit to the Aptus facility. Second, the Agency did not require oral presentations in a hearing to respond to the issues that did relate to the proposed delisting. While the Agency provided a written response to the commenter, the specific issues of concern to the commenter and the Agency's responses are also provided below.

The commenter expressed concern that "EPA is proposing to transfer a permit to incinerate hazardous waste and the related delisting without a public hearing." The commenter suggested that EPA was somehow taking a "shortcut" in the proper procedures, and argued that EPA should not "transfer" the permit and delisting to an incinerator at a different location without a hearing for the residents of Kansas.

In response to the above concern over the "transfer" of a permit without a hearing, the Agency would like to point out that permits and delistings address separate issues and are subject to separate procedural requirements. The permit will authorize Aptus to incinerate hazardous wastes under RCRA once the facility completes a successful trial burn. EPA and the State of Kansas issued a permit to Aptus in June of this year only after two public hearings; one prior to the first trial burn in 1989, and a more recent one in June of this year. These hearings were the proper forum for public comments on the decision to allow Aptus to incinerate hazardous wastes, including dioxin wastes, and EPA Region VII and the State of Kansas considered all comments received before issuing the permit.

In a delisting determination, EPA decides whether a particular hazardous waste presents so little risk to human health and the environment that it can be "reclassified" as a nonhazardous waste. Delistings are accomplished through a petition process that requires publication of proposed decisions in the **Federal Register**. While public hearings are an option, delistings rarely present issues that cannot be addressed adequately through written comments and responses. In fact, although EPA has taken final action on over 200 delisting petitions, it has not found it necessary to hold a hearing for any of them. As noted in the proposed rule, EPA believes that the Aptus incinerator will be at least as effective as the MIS in rendering the waste nonhazardous. Therefore, the proposal to transfer the delisting was justified and was consistent with the facility-specific nature of delisting.

The commenter also stated that the Aptus incinerator had failed its first trial burn, and noted that Missouri did not allow the incineration of the pesticide materials to proceed in the MIS. While these issues are outside the scope of the delisting decision, the Agency provides the following responses.

First, Aptus must complete a trial burn and meet the special standards for dioxin waste before it can incinerate the cancelled pesticide materials. The performance standards that an incinerator must meet in order to treat dioxin wastes are very stringent. Specifically, Aptus must demonstrate 99.9999% destruction and removal efficiency for hazardous constituents that are more difficult to incinerate than the key dioxin compound (TCDD). Second, Missouri did not extend the permit for the MIS in 1988, which would have allowed the cancelled pesticides to be incinerated, due to a prior understanding between Missouri and EPA concerning the limitations placed on the time period the MIS could operate, and the wastes it could treat (see letter from Ron Kucera to John Farlow, January 3, 1989, in the public docket for this notice). The MIS had successfully treated a fairly large

volume of dioxin-contaminated materials, and Missouri did not raise any technical reason in denying the permit modification. In any case, Kansas and EPA have fully evaluated the Aptus incinerator and approved the permit for the incineration of dioxin wastes (upon completion of a fully successful trial burn).

In comments related to delisting, the commenter suggested that the ultimate disposal site for the delisted residues should be specified, and indicated that Missouri would not allow disposal of the delisted materials at any of its permitted facilities.

EPA has never specifically designated a disposal site for a delisted waste. In evaluating the ultimate disposal of the delisted waste, EPA assumed a reasonable worst-case disposal in a Subtitle D landfill without any modern engineering barriers. Therefore, EPA believes that the waste, if delisted, may be safely disposed at any typical solid waste landfill. It should also be noted that the delisting is conditional, and would require Aptus to test the residues to ensure that the delisting levels are achieved. EPA has no knowledge that Missouri has refused to allow disposal of delisted residues; however, landfills typically have the option to restrict the wastes they choose to accept. If the residues are delisted, Aptus still must dispose of the residues according to the state regulations for nonhazardous solid waste. In the past, Aptus has chosen to dispose of nonhazardous waste from the incineration of polychlorinated biphenyls (PCBs) in a commercial hazardous waste landfill, and Aptus may decide to dispose of the delisted residues in a similar fashion.

Finally, the commenter stated that a hearing should also be held to determine the justification for allowing the delisting amendment to become effective immediately, rather than after the six month delay typical for RCRA regulations.

EPA proposed to make the delisting effective immediately upon final promulgation under section 3010(b)(1) of RCRA, because the regulated community (*i.e.*, Aptus) does not need the usual six months to come into compliance. Delaying the effective date of a decision to delist these wastes would continue to impose hazardous waste management requirements on residues that EPA has determined were not hazardous. Setting the effective date on the date of publication is standard practice for delistings granted in the past, and does not represent any special exception for the Aptus delisting.

3. Final Agency Decision

For the reasons stated in the proposal and described above, the Agency believes that the wastes to be generated by the incineration of the Byers Warehouse materials in Aptus' incinerator should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Aptus, Incorporated, located in Coffeyville, Kansas, for its incineration residues described in its petition as EPA Hazardous Waste No. F027.

The exclusion only applies to the kiln residue and spray dryer/baghouse residue generated during the treatment of the cancelled pesticide materials stored in Byers Warehouse. The facility would require a new exclusion if the treatment process is significantly altered, or if other materials are incinerated with the cancelled pesticides, and accordingly, would need to file a new petition. The facility must treat such wastes generated from significantly altered processes (or from co-incineration of other materials) as hazardous until a new exclusion is granted. The separate incineration of any other hazardous waste would also require a new petition for the residues to be nonhazardous.

Although the management of the wastes covered by this petition is relieved from RCRA subtitle C jurisdiction, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, a delisted waste may be delivered to a facility which beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under the State law.

IV. Effective Date

This rule is effective December 27, 1991. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedures Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This amendment to a previously granted exclusion is not major since its effect reduces the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its wastes as non-hazardous. There is no additional economic impact, therefore, due to today's rule. This rule is not a major regulation, therefore, no Regulatory Impact Analysis is required.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis, which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small

entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Dated: December 20, 1991.

Jeffrey D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In table 1 of appendix IX to part 261 the entry "EPA's Mobile Incineration System (MIS), McDowell, MO," is revised to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NONSPECIFIC SOURCES

Facility and address	Waste description
* * * * * * *	
Aptus, Inc., Coffeyville, Kansas.	Kiln residue and spray dryer/baghouse residue (EPA Hazardous Waste No. F027) generated during the treatment of cancelled pesticides containing 2,4,5–T and Silvex and related materials by Aptus' incinerator at Coffeyville, Kansas after December 27, 1991, so long as: (1) The incinerator is monitored continuously and is in compliance with operating permit conditions. Should the incinerator fail to comply with the permit conditions relevant to the mechanical operation of the incinerator, Aptus must test the residues generated during the run when the failure occurred according to the requirements of Conditions (2) through (4), regardless of whether or not the demonstration in Condition (5) has been made. (2) A minimum of four grab samples must be taken from each hopper (or other container) of kiln residue generated during each 24 hour run; all grabs collected during a given 24 hour run must then be composited to form one composite sample. A minimum of four grab samples must also be taken from each hopper (or other container) of spray dryer/baghouse residue generated during each 24 hour run; all grabs collected during a given 24 hour run must then be composited to form one composite sample. Prior to the disposal of the residues from each 24 hour run, a TCLP leachate test must be performed on these composite samples and the leachate analyzed for the TC toxic metals, nickel, and cyanide. If arsenic, chromium, lead or silver TC leachate test results exceed 1.6 ppm, barium levels exceed 32 ppm, cadmium or selenium levels exceed 0.3 ppm, mercury levels exceed 0.07 ppm, nickel levels exceed 10 ppm, or cyanide levels exceed 6.5 ppm, the wastes must be retreated to achieve these levels or must be disposed in accordance with Subtitle C of RCRA. Analyses must be performed according to SW–846 methodologies. (3) Aptus must generate, prior to the disposal of the residues, verification data from each 24 hour run for each treatment residue (i.e., kiln residue, spray dryer/baghouse residue) to demonstrate that the maximum allowable treatment residue concentrations listed below are not exceeded. Samples must be collected as specified in Condition (2). Analyses must be performed according to SW–846 methodologies. Any residues which exceed any of the levels listed below must be retreated or must be disposed of as hazardous. Kiln residue and spray dryer/baghouse residue must not exceed the following levels: Aldrin ..... 0.015 ppm Benzene ..... 9.7 ppm Benzo(a)pyrene ..... 0.43 ppm Benzo(b)fluoranthene ..... 1.8 ppm Chlordane ..... 0.37 ppm Chloroform ..... 5.4 ppm Chrysene ..... 170 ppm Dibenz(a,h)anthracene ..... 0.083 ppm 1,2-Dichloroethane ..... 4.1 ppm Dichloromethane ..... 2.4 ppm 2,4-Dichlorophenol ..... 480 ppm Dichlorvos ..... 260 ppm Disulfaton ..... 23 ppm Endosulfan I ..... 310 ppm Fluorene ..... 120 ppm Indeno(1,2,3,cd)-pyrene ..... 330 ppm Methyl parathion ..... 210 ppm Nitrosodiphenylamine ..... 130 ppm Phenanthrene ..... 150 ppm Polychlorinated biphenyls ..... 0.31 ppm Tetrachloroethylene ..... 59 ppm 2,4,5-TP (silvex) ..... 110 ppm 2,4,6-Trichlorophenol ..... 3.9 ppm

(4) Aptus must generate, prior to disposal of residues, verification data from each 24 hour run for each treatment residue (*i.e.*, kiln residue, spray dryer/baghouse residue) to demonstrate that the residues do not contain tetra-, penta-, or hexachlorodibenzo-p-dioxins or furans at levels of regulatory concern. Samples must be collected as specified in Condition (2). The TCDD equivalent levels for the solid residues must be less than 5 ppt. Any residues with detected dioxins or furans in excess of this level must be retreated or must be disposed of as acutely hazardous. SW-846 Method 8290, a high resolution gas chromatography and high resolution mass spectroscopy (HRGC/HRMS) analytical method must be used. For tetra- and penta-chlorinated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 15 ppt for the solid residues. For hexachlorinated dioxin and furan homologs, the maximum practical quantitation limit must not exceed 37 ppt for the solid residues.

(5) The test data from Conditions (1), (2), (3), and (4) must be kept on file by Aptus for inspection purposes and must be compiled, summarized, and submitted to the Director for the Characterization and Assessment Division, Office of Solid Waste, by certified mail on a monthly basis and when the treatment of the cancelled pesticides and related materials is concluded. The testing requirements for Conditions (2), (3), and (4) will continue until Aptus provides the Director with the results of four consecutive batch analyses for the petitioned wastes, none of which exceed the maximum allowable levels listed in these conditions and the director notifies Aptus that the conditions have been lifted. All data submitted will be placed in the RCRA public docket.

(6) Aptus must provide a signed copy of the following certification statement when submitting data in response to the conditions listed above: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate, and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy,I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete."

* * * * * * *

[FR Doc. 91-30967 Filed 12-26-91; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Federal Insurance Administration; Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Source of flooding and location	Depth in feet above ground. *Elevation in feet (NGVD)
LOUISIANA	
St. Charles Parish (Unincorporated Areas) (FEMA Docket No. 7034) Gulf of Mexico affecting:	
Lake Cataouatche:	
At confluence with Bayou des Saules	*9
At confluence with Bayou Couba	*8
Lake Salvador:	
At confluence with Bayou Couba	*10
At confluence with Baie du Cabanage	*10
Lake Pontchartrain:	
At intersection of Apple Street and Kansas City Southern Railway in Norco	*10
At confluence with Bayou La Branche	*16
Maps available for review at the St. Charles Parish Courthouse, Planning & Zoning Department, Hahnville, Louisiana.	

Dated: December 17, 1991.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 91-30679 Filed 12-26-91; 8:45 am]
BILLING CODE 6718-03-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1011, 1160, 1181, and 1186

[Ex Parte No. 55 (Sub-No. 84)]

RIN 3120-AB68

Safety Fitness Policy

AGENCY: Interstate Commerce Commission.

ACTION: Denial of petition to reopen; discontinuance of proceeding.

SUMMARY: The Commission denies a petition to reopen this proceeding filed by the Transportation Lawyers Association (TLA). Petitioner's challenge to the Commission's decision not to adopt independent safety fitness standards for certain licensing applicants otherwise exempt from the U.S. Department of Transportation's safety fitness regulations fails to establish material error, to introduce new evidence, or to demonstrate changed circumstances such as would warrant reopening this proceeding under 49 CFR 1115.3(b). To ensure that small vehicle operators have in place meaningful safety programs, however, the decision reiterates and clarifies the Commission's commitment to modify the standard licensing application form (Form OP-1) in a manner that will address with greater precision the safety fitness profiles of such applicants. The Commission's final rules implementing significant revisions to its safety fitness policy in the licensing and finance dockets, were published at 56 FR 46733 (1991).

EFFECTIVE DATE: This decision is effective on December 27, 1991.

FOR FURTHER INFORMATION CONTACT: Suzanne Higgins O'Malley (202) 927-5610 and Richard B. Felder (202) 927-5610 [TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: We disagree with TLA's suggestion that the Commission has in any way abrogated its safety fitness oversight responsibility and impermissibly deferred to DOT's safety oversight jurisdiction. Rather, we affirm our prior conclusion, as announced in earlier stages of this proceeding, that it is neither necessary nor appropriate for the Commission to assume a formal safety review and evaluation role for those carriers that are exempt by DOT regulation from the Federal safety fitness standards—*i.e.*, those referenced by petitioner that operate vehicles transporting 15 or fewer passengers and property carriers operating vehicles having a gross vehicle weight rating of 10,000 pounds or less.

In denying the petition to reopen, we advise TLA that the Commission is not the appropriate forum for consideration of the operational safety profiles of carriers exempt from Federal safety fitness regulations and that this proceeding is not the appropriate vehicle for a collateral attack on the sufficiency of Federal safety compliance requirements. The decision denying the petition also directed TLA, should it seek further assurance concerning the safety oversight of otherwise exempt carriers, to raise its concerns before DOT, the agency with primary safety oversight jurisdiction.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

Additional information is contained in the Commission's decision denying TLA's petition to reopen Ex Parte No. 55 (Sub-No. 84). To obtain a copy of the full decision, write to, call, or pick up in person from Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927-5721.]

Decided: December 12, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald. Commissioner Phillips commented with a separate expression. Commissioner McDonald dissented with a separate expression. Commissioner Simmons dissented in part with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-30925 Filed 12-26-91; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 56, No. 249
Friday, December 27, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket No. AO-341-45; FV-89-109]

Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Secretary's Decision and Referendum Order on Proposed Further Amendment of Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes amendments to the marketing agreement and order for cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York and provides cranberry producers and processors with the opportunity to vote in a referendum to determine if they favor the proposed amendments. The proposed amendments were submitted by the Cranberry Marketing Committee (Committee), the agency responsible for local administration of the marketing order program. The proposed changes would: (1) Authorize the Committee to conduct research and development projects; (2) provide a method whereby annual allotments are calculated on the basis of sales histories and add provisions regarding excess cranberries; (3) limit tenure for Committee members; (4) require handlers to pay assessments on the weight of acquired cranberries; (5) add a definition of barrel; and (6) make other miscellaneous changes that would be consistent with the proposed amendments. These changes are being proposed to improve the administration, operation and functioning of the marketing agreement and order program.

DATES: The referendum shall be conducted from January 13–31, 1992. The representative period for the purpose of the referendum herein ordered is September 1, 1990, to August 31, 1991.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 720–9920.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on January 2, 1990, and published in the **Federal Register** on January 4, 1990 (55 FR 295). Recommended Decision and Opportunity to File Written Exceptions issued on January 15, 1991, and published in the **Federal Register** on January 18, 1991 (56 FR 1938). Reopening of the period for filing written exceptions issued on March 5, 1991, and published in the **Federal Register** on March 11, 1991 (56 FR 10189). The exception period was reopened until March 15, 1991.

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291 and Departmental Regulation 1512–1.

Preliminary Statement

These proposed amendments were formulated on the record of a public hearing held in Plymouth, Massachusetts, on January 17, 1990; Cherry Hill, New Jersey, on February 6, 1990; Wisconsin Rapids, Wisconsin, on February 13, 1990; and Portland, Oregon, on February 15, 1990, to consider the proposed amendment of the Marketing Agreement and Order No. 929, regulating the handling of cranberries grown in 10 States, hereinafter referred to collectively as the "order." The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as to the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained several amendment proposals submitted by the Cranberry Marketing Committee (Committee) established under the order to assist in local administration of the marketing order.

The proposals would: (1) Authorize the Committee to conduct research and development projects; (2) provide a method whereby annual allotments are calculated on the basis of sales histories and add provisions regarding excess cranberries; (3) limit tenure provisions for Committee members; (4) require handlers to pay assessments on the weight of acquired cranberries; and (5) add a definition of barrel. The Department of Agriculture proposed that it be authorized to make any necessary conforming changes.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on January 15, 1991, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by February 19, 1991. The Department received a request that the USDA provide more time for interested persons to analyze the recommended decision and file exceptions. Therefore, the Department reopened the period for filing written exceptions until March 15, 1991 (56 FR 10189). One exception was received from Mr. David M. Farrimond, Manager of the Committee, who raised the following concerns regarding: (1) The inclusion of reporting and accounting requirements under the authority for production research and development; (2) the submission of a grower report by January 15; (3) an agreement between growers and handlers on the disposition of unused annual allotment; (4) the calculation of sales histories on leased or transferred acreage; (5) established cranberry acreage; and (6) staggered terms of office for Committee members.

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $500,000. Small agricultural service firms which include handlers

under this order, are defined as those with annual receipts of less than $3.5 million.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act have small entity orientation and compatibility. Interested persons were invited to present evidence at the hearing on the probable impact that the proposed amendments to the order would have on small businesses.

During the 1988–89 crop year, approximately 30 handlers were regulated under Marketing Order No. 929. In addition, there are about 950 growers of cranberries in the regulated area. The Act requires the application of uniform rules on regulated handlers. Since handlers covered under the cranberry marketing order are predominantly small businesses, the order itself is tailored to the size and nature of these small businesses. Marketing orders, and amendments thereto, are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

The proposed amendments to the marketing agreement and order include a provision authorizing the Committee to conduct production research and development projects. Presently, the cranberry marketing order authorizes only marketing research and development projects which are designed to assist, improve or promote the distribution and consumption of cranberries. Production-related research conducted on cranberries is usually performed through agricultural extension stations of state universities and colleges. Recent cutbacks in state funding to universities have caused concern with the cranberry industry that production research could be jeopardized, severely restricted or delegated to a lower priority in the future.

Cranberry growers today are encountering increased problems related to production yields. These include not only weather-related problems and diseases caused by fungi and insects but also increasing environmental concerns, e.g., water and chemical usage and expansion into wetlands. More and more, Federal and state laws have been implemented which restrict the use of chemicals and oversee water use. In addition, it is becoming more difficult to expand production in wetlands which are protected by federal and state laws. Research projects which address these concerns would benefit all cranberry growers and could help ensure adequate supplies and increased quality of cranberries to consumers.

The proposed changes to replace the current allotment base program with a sales history program are intended to reduce values currently associated with allotment base and reduce barriers to entry to cranberry production and sales. The changes which are intended to reduce barriers to entry are consistent with the Department's 1982 Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders (Guidelines). Also included under this issue are definitions of sales history, established cranberry acreage and the term handle; modification of the sections of the marketing order regarding transfers, interhandler transfers, and annual allotment; and the addition of new order sections concerning excess cranberries.

Under this proposal, a grower's sales history would be calculated based on such grower's sales, expressed as an average of the best four of the previous six years. Each year, a grower's sales history would be automatically recalculated by the Committee with the newest crop year's sales being added and the oldest crop year's sales being dropped from the six-year period. Sales history would be transferred with the acreage on which it was earned, thus ensuring that a buyer or lessee receives sales history on acreage which is bought or leased. If there is no sales history or less than four years of sales history, sales history would be computed based on the number of years of actual sales until four years of sales is reached or the Committee would use the state average yield multiplied by the grower's cranberry acreage to calculate the grower's allotment. There are also provisions to not penalize a grower who loses a crop for three consecutive years because of natural disasters.

Under the proposed allotment program, when a marketable quantity and an allotment percentage have been established, growers would deliver all of their cranberries to handlers. Handlers could handle only the total of the annual allotments of all growers delivering cranberries to them. Cranberries in excess of those received under allotment would be called excess cranberries and would be able to be used only in noncommercial and/or noncompetitive markets.

The proposal to limit tenure for Committee members would allow for different and more contemporary ideas to be represented on the Committee and would be consistent with the Department's Guidelines. Currently, Committee members may serve for unlimited terms of office. This proposal would limit the terms of office. This proposal would limit the terms of office that Committee members may serve to three consecutive two-year terms of office. The terms of alternate members would not be limited Members serving three consecutive terms would again become eligible to serve on the Committee by not serving for one full term as either a member or an alternate member. This proposal could encourage and foster, to the maximum extent possible, broad-based participation by all industry members of the regulated community in the administration of the marketing order.

The proposal to add a requirement for handlers to pay assessments on the weight of acquired cranberries would require that all cranberries delivered to a handler, with the exception of excess cranberries, be assessed. Currently an assessment rate per 100-pound barrel is applied to the total barrels of cranberries a handler handled, i.e., canned, frozen, or dehydrated. However, fresh cranberries usually experience a loss in weight, called shrinkage, between the time they are received by the handler and the time they are actually handled. Therefore, the weight lost to shrinkage is not assessed. The Committee recommended that cranberries be assessed based on their weight when acquired by the handler prior to shrinkage. Thus, handlers would be assessed on all cranberries received, with the exception of excess cranberries, and assessments due to shrinkage would not be lost.

The proposal to add a definition of barrel would reflect current usage of this term in the industry. The marketing order does not include a definition of the term barrel. The term "barrel," which is equal to 100 pounds of cranberries, is used and understood by growers, processors, and handlers. Growers report their sales on a yearly basis in barrels and handlers report the number of cranberries acquired from growers and the disposition of such cranberries during the crop year in barrels.

The proposal to make other miscellaneous changes that would be consistent with the proposed amendments is necessary so that all sections of the order would be consistent if any or all of the amendments are adopted. These changes include deleting and

redesignating certain sections of the order.

All of these changes are designed to enhance the administration and functioning of the marketing agreement and order to the benefit of the industry. Accordingly, it is determined that the proposed revisions of the order would not have a significant economic impact on handlers or growers.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the reporting and recordkeeping provisions that are included in the proposed amendments have been submitted to the Office of Management and Budget (OMB). Any forms associated with these provisions could not be used prior to OMB approval.

Findings and Conclusions

The material issues, findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the January 18, 1991, issue of the **Federal Register** (56 FR 1938) are hereby approved and adopted subject to the following additions and modifications:

Based upon the exception filed by Mr. Farrimond, the findings and conclusions in material issue number 1 of the Recommended Decision, concerning the authority for production research and development, are amended by adding the following paragraph after the thirteenth paragraph of material issue number 1 to read as follows:

The exception received from Mr. Farrimond indicated that the record evidence did not oppose the Committee's modification to include reporting and accounting requirements for researchers conducting research projects on behalf of the Committee. Rather, the record showed that the reporting and accounting requirements should be flexible. The Committee agrees with the researchers regarding flexibility of these provisions. Mr. Farrimond's exception raised no further information to reverse the Department's position on this issue. The amendatory language in the Recommended Decision authorized the Committee to establish rules and regulations, as necessary, for the implementation and operation of the proposed amendment. Rules and regulations, which are established through informal rulemaking, can be accomplished through a notice and comment period which is a much shorter and less expensive process than the formal rulemaking procedure which is required to amend an order provision. The establishment of rules and regulations should provide adequate flexibility as supported by the testimony. Therefore, Mr. Farrimond's exception is denied.

Based upon the exception filed by Mr. Farrimond, the findings and conclusions in material issue number 2 of the Recommended Decision, concerning the calculation of annual allotments on the basis of sales histories, are amended by adding the following two paragraphs after the 16th paragraph of material issue number 2 to read as follows:

The exception received by Mr. Farrimond objected to the Department's modification to the amendatory language in the Recommended Decision regarding the submission of the production and eligibility report by producers to the Committee for the purpose of calculating sales histories. The Department proposed the following language in § 929.48(b) of the Recommended Decision to provide "for each grower who wishes to market cranberries under the marketing order shall file a report with the Committee by January 15 of each crop year * * *" Mr. Farrimond pointed out that the marketing order does not preclude growers from marketing their crop. Mr. Farrimond also asserted that the language implies that growers are prohibited from marketing their crop without filing a report with the Committee. The Department has revised the amendatory language in § 929.48(b) as appropriate. The language "to allow the committee to complete a sales history for each grower" is also added to the section for clarity.

However, that portion of the exception that recommended an amendment to the end of § 929.48(b) to provide, "failure to provide the committee with such report may result in the grower not receiving credit for the barrels sold during that crop year," is not adopted. The Recommended Decision has already indicated that such failure to submit a report by January 15 could result in a grower not receiving credit for barrels sold during the crop year. Including this language in the order provision itself is not necessary.

In additiion, § 929.48(a)(5) is revised for the purposes of clarifying the amendatory language. That section will now provide for growers who have unused allotment and received a sales history calculated pursuant to § 929.48(a)(5) shall forfeit such unused allotment. The record indicates that growers or handlers should not be able to utilize the unused allotment since it was not actually earned by such grower.

Further, the following revisions to the findings and conclusions in the Recommended Decision are also made based upon the above referenced exception filed by Mr. Farrimond. The phrase "but would not be able to market the cranberries" is deleted from material issue number 2, 9th paragraph, 2nd sentence, of the Recommended Decision. Also, the 22nd paragraph, 2nd sentence under material issue number 2 is revised by deleting the phrase "and they would be eligible for an annual allotment immediately which enables them to sell their cranberries during a year when a marketable quantity has been established."

Based upon the exception filed by Mr. Farrimond, the findings and conclusions in material issue number 2 of the Recommended Decision, concerning the calculation of annual allotments on the basis of sales histories, are further amended by adding the following two paragraphs after the 49th paragraph of material issue number 2 to read as follows:

Mr. Farrimond stated in his exception that the words "equal to their" in § 929.49(f) had been deleted from the amendatory language. These words were included in the Notice of Hearing and were erroneously deleted from the Recommended Decision.

Mr. Farrimond also objected to the sentence in § 929.49(f) which would authorize growers to enter into an agreement with handlers as to the disposition of their unused annual allotment. The record evidence indicated that growers shall transfer all unused annual allotment to their handler or handlers. Handlers would then equitably apportion such unused allotment among those growers having excess cranberries. Mr. Farrimond stated that the two criteria are conflicting and allowing growers to enter into an agreement on the disposition of their unused allotment could cause a monetary value to be assigned to such unused allotment. The evidence supports Mr. Farrimond's exception; therefore, the sentence regarding the agreement between the grower and handler on the disposition of unused allotment is deleted from the Recommended Decision. Therefore, in accordance with Mr. Farrimond's exception, the amendatory language in § 929.49(f) is so modified.

Based upon the exception filed by Mr. Farrimond, the findings and conclusions in material issue number 2 of the Recommended Decision, concerning the calculation of annual allotments on acreage that is leased or transferred are further amended by adding the following two paragraphs after the 24th paragraph of material issue number 2 to read as follows:

Mr. Farrimond also objected to the provision in § 929.50(a)(5) which

concerns the determination of sales history associated with cranberry acreage being leased or transferred during a year of nonregulation. The method for determining sales history proposed in § 929.50(a)(5) is inconsistent with the proposed formula in § 929.48 and the record evidence. Mr. Farrimond correctly points out that the evidence supports the determination of sales history on the basis of the formula in § 929.48 because that formula would also be used to calculate the sales history on leased or transferred cranberry acreage. Therefore, in accordance with Mr. Farrimond's exception, the amendatory language in § 929.50(a)(5) is revised.

Mr. Farrimond's exception stated that there appear to be inconsistencies in filing requirements between paragraphs (a) (2), (3), and (4) of § 929.50. This section provides for the transfer of sales history when leasing or purchasing cranberry acreage. The evidence supports that no transfer of sales history will be recognized unless both the transferee and transferor notify the Committee in writing. While the evidence supports this requirement, the amendatory language in § 929.50(a)(3) of the Recommended Decision specifies that either the seller or lessor of cranberry acreage shall provide the Committee with the completed transfer forms. The record evidence further indicated that it is not always possible to obtain a completed tranfer form from both parties involved in the transfer. This could cause delays and impede the committee's ability to calculate a sales history for the buyer. Therefore, § 929.50(a)(3) should be revised by replacing the word "and" with "or", and adding a proviso to §929.50(a)(4) to allow the Committee to recognize the filing of only one form from one of the parties if unusual circumstances exist. Therefore, in accordance with Mr. Farrimond's exception, the amendatory language is revised accordingly.

Based upon the exception filed by Mr. Farrimond, the findings and conclusions in material issue number 2 of the Recommended Decision, concerning the calculation of annual allotments on the basis of sales histories, are further amended by adding the following paragraph after the 40th paragraph of material issue number 2 to read as follows:

Mr. Farrimond's exception also favored the deletion of the term "established cranberry acreage;" however, he noted an inconsistency in § 929.48(a)(4) where the term is used. Therefore, in accordance with Mr. Farrimond's exception, the term "established cranberry acreage" is therefore deleted in the amendatory language under § 929.48(a)(4).

Based upon the exception filed by Mr. Farrimond, the findings and conclusions in material issue number 3 of the Recommended Decision, concerning tenure requirements for Committee members, are amended by adding the following paragraph after the fourth paragraph of material issue number 3 to read as follows:

Mr. Farrimond's exception favored tenure requirements of three consecutive two-year terms of office for Committee members. However, he objected to staggering the terms of office for Committee members. The record evidence, however, supported staggering the terms of office. As stated above, staggering the terms of office would preclude the loss of all or most of the Committee members at one time due to tenure limitations. Mr. Farrimond stated in his exception that staggering the terms of office for District 1 and District 2 could have an adverse impact on the Committee's independent member representation, since there are only a small number of independent growers in District 2. However, if no other qualified candidate can be found to serve on the Committee from that district, the Secretary has the authority to exempt the Committee member whose tenure has expired from the tenure requirements. Thus, Mr. Farrimond's exception is denied.

Rulings on Exceptions

In arriving at the findings and conclusions and the regulatory provisions of this decision, the exceptions to the Recommended Decision were carefully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exceptions, such exceptions are denied.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents entitled, respectively, "Order Amending the Order Regulating the Handling of Cranberries Grown in 10 States" and "Marketing Agreement as Amended, Regulating the Handling of Cranberries Grown in 10 States." These documents have been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision be published in the **Federal Register.** The regulatory provisions of the marketing agreement are identical to those contained in the order as hereby proposed to be amended by the annexed order which is published with this decision.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et seq.*) to determine whether the issuance of the annexed order amending the order regulating the handling of cranberries grown in 10 States is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production of cranberries grown in 10 States.

The representative period for the conduct of such referendum is hereby determined to be September 1, 1990, through August 31, 1991.

The agents of the Secretary to conduct such referendum are hereby designated to be Anne M. Dec, Patricia A. Petrella and Maureen T. Pello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Washington, DC 20250–6456, telephone (202) 720–9920.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

Signed at Washington, DC, on December 18, 1991.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

Order Amending the Order Regulating the Handling of Cranberries Grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York [1]

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.* Pursuant to the provisions of the

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 929 (7 CFR part 929), regulating the handling of cranberries grown in 10 States.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The order, as amended, as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as amended, as hereby proposed to be further amended, regulates the handling of cranberries grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The order, as amended, as hereby proposed to be further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The order, as amended, as hereby proposed to be further amended, prescribes, in so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of cranberries grown in the production area; and

(5) All handling of cranberries grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of cranberries grown in 10 States shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

Except for the previously noted changes, the provisions of the proposed marketing agreement and the order amending the order contained in the Recommended Decision issued by the Administrator on January 15, 1991, and published in the **Federal Register** on January 18, 1991, shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

2. Section 929.10 is revised as follows:

§ 929.10 Handle.

(a) *"Handle"* means (1) to can, freeze, or dehydrate cranberries within the production area or (2) to sell, consign, deliver, or transport (except as a common or contract carrier of cranberries owned by another person) fresh cranberries or in any other way to place fresh cranberries in the current of commerce within the production area or between the production area and any point outside thereof in the United States or Canada.

(b) The term *"handle"* shall not include: (1) The sale of nonharvested cranberries; (2) the delivery of cranberries by the grower thereof to a handler having packing or processing facilities located within the production area; (3) the transportation of cranberries from the bog where grown to a packing or processing facility located within the production area; or (4) the cold storage or freezing of excess cranberries for the purpose of temporary storage during periods when an annual allotment percentage is in effect prior to their disposal, pursuant to 929.59.

§ 929.13 [Removed]

3. Section 929.13 is removed.

4. A new § 929.13 is added to read as follows:

§ 929.13 Sales history.

Sales history means the number of barrels of cranberries established for a grower by the committee pursuant to section 929.48.

5. Section 929.15 is revised to read as follows:

§ 929.15 Annual allotment.

A grower's annual allotment for a particular crop year is the number of barrels of cranberries determined by multiplying such grower's sales history by the allotment percentage established pursuant to § 929.49 for such crop year.

§ 929.16 [Removed]

6. Section 929.16 is removed and reserved.

7. A new § 929.17 is added to read as follows:

§ 929.17 Barrel.

"Barrel" means a quantity of cranberries equivalent to 100 pounds of cranberries.

8. Section 929.21 is revised to read as follows:

§ 929.21 Term of office.

The term of office for each member and alternate member of the committee shall be for two years, beginning on August 1 of each even-numbered year and ending on the second succeeding July 31. Members and alternate members shall serve the term of office for which they are selected and have been qualified or until their respective successors are selected and have been qualified. Beginning on August 1 of the even-numbered year following the adoption of this amendment, committee members shall be limited to three consecutive terms: *Provided,* That committee members representing Districts 1 and 2 shall be limited to two consecutive terms of office for the initial period following adoption of this amendent. The consecutive terms of office for alternate members shall not be limited. Members serving three consecutive terms may become eligible to serve on the committee by not serving for one full term as either a member or an alternate member, unless specifically exempted by the Secretary.

9. Section 929.41 is revised to read as follows:

§ 929.41 Assessments.

(a) As a handler's pro rate share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during a fiscal period, a handler shall pay to the committee assessments on all cranberries acquired as the first handler thereof during such period, except as provided in § 929.55: *Provided,* That no handler shall pay assessments on excess cranberries as provided in § 929.57. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each handler during a fiscal period in an amount designated to secure funds sufficient to cover the expenses which may be incurred during such period and to accumulate and maintain a reserve fund equal to approximately one fiscal period's expenses. At any time during or

after the fiscal period, the Secretary may increase the assessment rate in order to secure funds sufficient to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all cranberries acquired during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal year, before sufficient operating income is available from assessments, the committee may accept the payment of assessments in advance and may also borrow money for such purposes.

(c) If a handler does not pay such assessment within the period of time prescribed by the committee, the assessment may be increased by either a late payment charge, or an interest charge, or both, at rates prescribed by the committee, with the approval of the Secretary.

10. Section 929.45 is revised to read as follows:

§ 929.45 Research and development.

(a) The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research, and market development projects designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of cranberries. The expense of such projects shall be paid from funds collected pursuant to § 929.41, or from such other funds as approved by the Secretary.

(b) The committee may, with the approval of the Secretary, establish rules and regulations as necessary for the implementation and operation of this section.

§ 929.48 [Removed]

11. Section 929.48 is removed.

12. A new § 929.48 is added to read as follows:

§ 929.48 Sales history.

(a) Determination of sales history. (1) The initial sales history shall be computed by the committee for each grower using the best four out of six years of such grower's sales history, which shall include all commercial sales from the first complete crop year following adoption of this amendment, plus the prior five years' history of commercial sales, except as otherwise provided in paragraph (a)(5) of this section. For a grower with four years or less of commercial sales history, the initial sales history shall be computed by the committee using all available years of such grower's commercial sales history.

(2) A new sales history shall be computed for each grower after each crop year during which no volume regulation was established, in the same manner as for the initial sales history, except that the most recent crop year shall be used instead of the earliest crop year, and except as otherwise provided in paragraph (a)(4) of this section. The committee, with the approval of the Secretary, may, by regulation, alter the number and identity of years to be used in computing these subsequent sales histories.

(3) A new sales history shall be calculated for each grower after each crop year, during which a volume regulation has been established, using a formula determined by the committee, with the approval of the Secretary.

(4) Beginning with the first complete crop year following the adoption of this section, if a grower has no commercial sales from such grower's cranberry acreage for three consecutive crop years due to forces beyond the grower's control, the committee shall compute a level of commercial sales for the fourth year for that acreage using an estimated production, obtained by crediting the grower with the average sales from the preceding three years during which sales occurred. Any and all relevant factors regarding the grower's lost production may be considered by the committee prior to establishing a sales history for such acreage.

(5) The committee shall compute a sales history for a grower who has no history of sales associated with such grower's cranberry acreage during a crop year when a volume regulation has been established, using the greater of the following: (i) The total estimated commercial sales from a grower's cranberry acreage, or (ii) The state acreage yield per acre multiplied by the grower's cranberry producing acreage. *Provided*, That a grower having unused allotment and received a sales history computed under either of these methods shall forfeit such unused allotment.

(b) Grower report. Each grower shall file a report with the committee by January 15 of each crop year, indicating the total acreage harvested, the total commercial cranberry sales in barrels from such acreage, and the amount of any new or renovated acreage planted, to allow the committee to compute a sales history for each grower.

(c) The committee may establish, with the approval of the Secretary, rules and regulations necessary for the implementation and operation of this section.

13. Section 929.49 is revised to read as follows:

§ 929.49 Marketable quantity, allotment percentage and annual allotment.

(a) Marketable quantity and allotment percentage. If the Secretary finds, from the recommendation of the committee or from other available information, that limiting the quantity of cranberries purchased from or handled on behalf of growers during a crop year would tend to effectuate the declared policy of the Act, the Secretary shall determine and establish a marketable quantity for the crop year.

(b) The marketable quantity shall be apportioned among growers by applying the allotment percentage to each grower's sales history, established pursuant to section 929.48. Such allotment percentage shall be established by the Secretary and shall equal the marketable quantity divided by the total of all growers' sales histories. Except as provided in paragraph (f) of this section, no handler shall purchase or handle on behalf of any grower cranberries not within such grower's annual allotment.

(c) In any crop year in which the production of cranberries is estimated by the committee to be equal to or less than its recommended marketable quantity, the committee may recommend and the Secretary may increase or suspend the allotment percentage applicable to that year. In the event it is found that market demand is greater than the marketable quantity previously set, the committee may recommend and the Secretary may increase such quantity.

(d) Issuance of annual allotments. The committee shall require all growers to qualify for their allotment by filing with the committee, on or before April 15 of each year, a form wherein growers include the following information: The location of their cranberry producing acreage from which their annual allotment will be produced; the amount of acreage which will be harvested; changes in location, if any, of annual allotment; and such other information, including a copy of any lease agreement, as is necessary for the committee to administer this part. On or before June 1, the committee shall issue to each grower an annual allotment determined by applying the allotment percentage established pursuant to paragraph (b) of this section to the grower's sales history.

(e) On or before June 1 of any year in which an allotment percentage is established by the Secretary, the committee shall notify each handler of the annual allotment that can be

handled for each grower whose total crop will be delivered to that handler. In cases where a grower delivers a crop to more than one handler, such grower's annual allotment will be apportioned equitably among the handlers.

(f) Growers who do not produce cranberries equal to their computed annual allotment shall transfer their unused allotment to such growers' handlers. The handler shall equitably allocate the unused annual allotment to growers with excess cranberries who deliver to such handler. Unused annual allotment remaining after all such transfers have occurred shall be transferred to the committee pursuant to paragraph (g) of this section.

(g) Handlers who receive cranberries more than the sum of their growers' annual allotments have "excess cranberries," pursuant to § 929.59, and shall so notify the committee. Handlers who have remaining unused allotment pursuant to paragraph (f) of this section are "deficient" and shall so notify the committee. The committee shall equitably distribute unused allotment to all handlers having excess cranberries.

(h) The committee may establish, with the approval of the Secretary, rules and regulations necessary for the implementation and operation of this section.

14. Section 929.50 is revised to read as follows:

§ 929.50 Transfers.

(a) Transfers to another grower. A grower who owns cranberry acreage on which a sales history has been established may transfer the acreage and sales history to another grower. When transfers of acreage occur, transfers of sales history will be made under the following conditions:

(1) A lease agreement between the owner of the cranberry producing acreage and a lessee: Terms of such lease agreement shall be filed with the committee prior to the committee recognizing such transfer. The lease agreement filed with the committee shall include the following information: (i) Name of owner and lessee; (ii) Starting and ending dates of the lease; (iii) Amount of acreage transferred; and (iv) The amount of sales history transferred.

(2) Total sale of cranberry acreage. When there is a sale of a grower's total cranberry producing acreage, the seller and buyer shall file a completed transfer form with the committee and the buyer will have immediate access to the sales history computation process.

(3) Partial sale or lease of cranberry acreage. When less than the total cranberry producing acreage is sold or leased, sales history associated with the portion of the acreage being sold or leased shall be transferred with the acreage. The seller and lessor shall provide the committee with a completed transfer or lease form outlining such distribution of acreage and sales history between the parties. Such transfer or lease form shall include that percentage of the sales history, as defined in § 929.48(a)(1), attributable to the acreage being transferred or leased.

(4) No transfer shall be recognized by the committee unless the tranferee and transferor notify the committee in writing: *Provided That*, if unusual circumstances exist, the Committee may recognize a transfer when only one form from the transferee or transferor is filed with the committee.

(5) In a year of nonregulation, in the absence of any sales history associated with the cranberry acreage being transferred or leased, the committee shall determine the buyer's or lessee's sales history pursuant to § 929.48 of the order.

(6) During a year when a volume regulation has been established, no transfer or lease of cranberry producing acreage, without accompanying sales history, shall be recognized until the committee is in receipt of a completed transfer or lease form.

(b) The committee may establish, with the approval of the Secretary, rules and regulations, as needed, for the implementation and operation of this section.

15. Amend § 929.52 by revising paragraph (a) to read as follows:

§ 929.52 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of cranberries whenever the Secretary finds, from the recommendations and information submitted by the committee, or from other available information, that such regulation will tend to effectuate the declared policy of the Act. Such regualation shall limit the total quantity of cranberries which may be handled during any fiscal period either by fixing the free and restricted percentages, which percentages shall be applied to cranberries acquired by handlers during such fiscal period in accordance with § 929.54, or by establishing an allotment percentage in accordance with § 929.49.

* * * * *

16. Section 929.55 is revised to read as follows:

§ 929.55 Interhandler transfer.

(a) Transfer or cranberries from one handler to another may be made without prior notice to the committee, except during a period when a volume regulation has been established. If such transfer is made between handlers who have packing or processing facilities located within the production area, the assessment and withholding obligations provided under this part shall be assumed by the handler who agrees to meet such obligation. If such transfer is to a handler whose packing or processing facilities are outside of the production area, such assessment and withholding obligation shall be met by the handler residing within the production area.

(b) All handlers shall report all such transfers to the committee on a form provided by the committee four times a year or at other such times as may be recommended by the committee and approved by the Secretary.

(c) The committee may establish, with the approval of the Secretary, rules and regulations necessary for the implementation and operation of this section.

17. A new § 929.59 is added to read as follows:

§ 929.59 Excess cranberries.

(a) Whenever the Secretary establishes an allotment percentage pursuant to § 929.52, handlers shall be notified by the committee of such allotment percentage and shall withhold from handling such cranberries in excess of the total of their growers' annual allotments obtainted during such period. Such withheld cranberries shall be defined as "excess cranberries" after all unused allotment has been allocated.

(1) Excess cranberries received by a handler shall be made available for inspection by the committee or its representatives from the time they are received until final disposition is completed. Such excess cranberries shall be identified in such manner as the committee may specify in its rules and regulations with the approval of the Secretary.

(2) All matters dealing with handler-held excess cranberries shall be in accordance with such rules and regulations established by the committee, with the approval of the Secretary.

(b) Prior to January 1, or such other date as recommended by the committee and approved by the Secretary, handlers holding excess cranberries shall submit to the committee a written plan outlining procedures for the systematic disposal of such cranberries in the outlets prescribed in § 929.61.

(c) Prior to March 1, or such other date as recommended by the committee and approved by the Secretary, all excess

cranberries shall be disposed of pursuant to 929.61.

§§ 929.60–929.63 [Redesignated as §§ 929.62–929.65]

§§ 929.65–929.75 [Redesignated as §§ 929.67–929.77]

18. Redesignate §§ 929.60, 929.61, 929.62, and 929.63 of *Reports and Records* as §§ 929.62, 929.63, 929.64, and 929.65, respectively. In addition, redesignate §§ 929.65, 929.66, 929.67, 929.68, 929.69, 929.70, 929.71, 929.72, 929.73, 929.74, and 929.75 of *Miscellaneous Provisions* as §§ 929.67, 929.68, 929.69, 929.70, 929.71, 929.72, 929.73, 929.74, 929.75, 929.76, and 929.77, respectively.

19. A new § 929.60 is added to read as follows:

§ 929.60 Handling for special purposes.

Regulations in effect pursuant to §§ 929.10, 929.41, 929.47, 929.48, 929.49, 929.51, 929.52, or 929.53 or any combination thereof, may be modified, suspended, or terminated to facilitate handling of excess cranberries for the following purposes.

(a) Charitable institutions;

(b) Research and development projects described pursuant to section 929.61;

(c) Any nonhuman food use;

(d) Foreign markets, except Canada; and

(e) Other purposes which may be recommended by the committee and approved by the Secretary.

20. A new § 929.61 is added to read as follows:

§ 929.61 Outlets for excess cranberries.

(a) Noncommercial outlets. Excess cranberries may be disposed of only in the following noncommercial outlets that the committee finds, with approval of the Secretary, meet the requirements outlined in paragrpah (c) of this section:

(1) Charitable institutions; and

(2) Research and dedvelopment projects approved by the U.S. Department of Agriculture for the development of foreign and domestic markets, including, but not limited to, dehydration, radiation, freeze drying, or freezing of cranberries.

(b) Noncompetitive outlets. Excess cranberries may be sold to outlets that the committee finds, with the approval of the Secretary, are noncompetitive with established markets for regulated cranberries and meet the requirements outlined in paragraph (c) of this section. These outlets include: (1) Any nonhuman food use; and (2) Foreign markets, except Canada.

(c) Requirements for diversion. The following requirements, as applicable, shall be met by the handler diverting excess cranberries into noncompetitive or noncommercial outlets:

(1) Diversion to charitable institutions. A statement from the charitable institution shall be submitted to the commitee showing the quantity of cranberries received and certifying that the cranberries will be utilized by the institution;

(2) Diversion to research and development projects. A report shall be given to the committee describing the project, quantity of cranberries diverted, and date of disposition;

(3) Division to a nonhuman food use. Notification shall be given to the committee at least 48 hours prior to such disposition; and

(4) Diversion to foreign markets, except Canada. A copy of the on-board bill of lading shall be submitted to the committee showing the amount of cranberries loaded for export.

(d) The storage and disposition of all excess cranberries withheld from handling shall be subject to the supervision and accounting control of the commitee.

(e) The committee, with approval of the Secretary, may establish as needed rules and regulations for the implementation and operation of this section.

Dated: December 18, 1991.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

UNITED STATES DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Marketing Agreement, As Amended, Regulating the Handling of Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York

The parties hereto, in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the "Act" (7 U.S.C. 601–674), and in accordance with the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and orders (7 CFR part 900), desire to enter into this agreement amending the amended marketing agreement regulating the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; and each party hereto agrees that the handling of cranberries shall be in conformity to, and in compliance with, the provisions of the said marketing agreement, as amended, and as hereby further amended in the following respects:

The provisions of §§ 929.1 to 929.75, inclusive, of Order No. 929, as amended (7 CFR part 929), regulating the handling of cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, and as further amended by the order annexed to and made a part of the decision of the Secretary of Agriculture with respect to proposed further amendment of the aforesaid marketing agreement and order, are hereby incorporated into this agreement as if set forth in full herein; and the specified provisions as further amended by said annexed order, plus the following additional provisions, shall be, and the same hereby are, the terms and conditions hereof:

Section 929.76 *Counterparts.* This agreement may be executed in multiple counterparts, and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

Section 929.77 *Additional parties.* After the effective date hereof, any handler may become a party to this agreement if a counterpart thereof is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

Section 929.78 *Order with marketing agreement.* Each contracting handler hereby requests the Secretary to issue, pursuant to the Act, an order regulating the handling of cranberries in the same manner as is provided for this agreement.

The undersigned hereby authorizes the Director or Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, to correct any typographical errors which may have made in this agreement amending the marketing agreement.

IN WITNESS WHEREOF, the contracting parties, acting under the provisions of the Act, for the purpose and subject to the limitations therein contained, and not otherwise, have hereto set their respective signatures and seals.

(Firm name) _____

_____

(Address) _____

_____

By (Name) _____

_____

(Title) _____

_____

(Date of Execution) _____

_____

(Corporate seal; if none, so state)

[Doc. 91–30958 Filed 12–26–91; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Parts 318 and 381

[Docket No. 88-033E]

RIN 0583-AA95

Finished Products Inspection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On September 24, 1991, the Food Safety and Inspection Service (FSIS) published a proposed rule to amend the Federal meat and poultry products inspection regulations to allow canning establishments more flexibility in complying with the regulatory requirements concerning finished product inspection of thermally-processed shelf stable canned product. FSIS has received a request to extend the comment period for an additional 30 days. FSIS has determined that the request should be granted. Therefore, FSIS is reopening the comment period for an additional 30 days.

DATE: Comments must be received on or before: January 27, 1992.

ADDRESSES: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided by the Poultry Products Inspection Act should be directed to Mr. William C. Smith, at (202) 720-3840.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Smith, Director, Processed Products Inspection Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Area Code (202) 720-3840.

SUPPLEMENTARY INFORMATION: Currently, quality control programs regarding finished product inspection of thermally-processed shelf stable canned products must comply with specific requirements of sections 318.309 and 381.309 of the Federal meat and poultry products inspection regulations. The Agency received two petitions from the National Food Processors Association (NFPA) to amend the Federal meat and poultry products inspection regulations to allow canning establishments more latitude in complying with the requirements contained in sections 318.309 and 381.309 of the Federal meat and poultry products inspection regulations.

On September 24, 1991, FSIS published a proposed rule (56 FR 48131) to amend the Federal meat and poultry products inspection regulations to allow quality control programs to differ from current regulatory requirements. Such programs must be determined to be equivalent to the current regulatory requirements or meet the intent of such requirements which is to provide assurance of the safety and stability of canned products.

Interested persons were given until November 25, 1991, to comment on this proposed rule. FSIS has received a request to extend the comment period to allow more time to review the proposal and submit comments. The Agency is interested in receiving such information pertaining to this proposed rule and is, therefore, reopening the comment period for an additional 30 days.

Done at Washington, DC, on: December 23, 1991.

Ronald J. Prucha,

Acting Administrator.

[FR Doc. 91-30961 Filed 12-26-91; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 31 and 32

RIN 3150—AD34

Requirements for the Possession of Industrial Devices Containing Byproduct Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations governing the safe use of byproduct material in certain measuring, gauging, or controlling devices. The proposed changes, among other things, would require general licensees who posses these devices to provide the NRC information about the identification of devices and the people responsible for the devices. Further, specific licensees who are distributors of generally licensed devices under 10 CFR 31.5 would be required to use a uniform format when submitting the quarterly transfer reports to NRC. The proposed rule is intended to ensure that general licensees are aware of and understand the requirements for the possession of devices containing byproduct material. This awareness will better assure that general licensees will comply with the requirements for proper handling and disposal of generally licensed devices and presumably reduce the potential for incidents that could result in unnecessary radiation exposure to the public.

DATES: The comment period expires March 12, 1992. Comments received after this date will be considered if it is practicable to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to One White Flint North, 11555 Rockville Pike, Rockville, MD, between 7:30 am and 4:15 pm on weekdays. Copies of the draft regulatory analysis, as well as copies of the comments received on the proposed rule, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph J. Mate, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3795.

SUPPLEMENTARY INFORMATION:

Background

On February 12, 1959 (24 FR 1089), the Atomic Energy Commission amended its regulations to provide a general license for the use of byproduct material contained in certain lumious, measuring, gauging, and controlling devices. Under the current requirements for possession of a general license, certain persons may receive and use a device containing byproduct material if the device has been manufactured and distributed in accordance with the specifications contained in a specific license issued by the NRC or by an Agreement State. A specific license is issued based upon a determination by a regulatory authority that the safety features of the device and the instructions for safe operation are adequate and meet regulatory requirements. The general licensee is required to comply with the safety instructions contained in or referenced on the label of the device and to have the testing or servicing of the device performed by an individual authorized to manufacture, install, or service these devices. A generally licensed device is a "black box," that is, the radioactive material is contained in a sealed source usually within a shielded device. The device is designed with inherent radiation safety features so that it can be used by persons with no radiation training or experience. Thus, the general license policy is a mechanism to

simplify the license process so that a case-by-case determination of the adequacy of the radiation training or experience of each user is not necessary.

Discussion

There are about 600,000 devices that contain byproduct material is use by about 35,000 licensees under the Commission's general license regulatory program. General licensees have not been contacted by NRC on a regular basis because of the relatively small radiation risk posed by generally licensed devices. These devices have survived fires and explosions on many occasions without a total loss of shielding. They have been damaged by molten steel, and hit by construction vehicles with only minor losses in radiation shielding while maintaining the integrity of the source capsule.

Nonetheless, there have been a number of occurrences where devices containing radioactive material have not been properly handled or disposed of and resulted in radiation exposure of the public. Although no significant public health and safety hazards resulted from these incidents, if proper handling and disposal procedures had been followed, these avoidable exposures would not have occurred. For example, one or more cesium-type gauges were mixed in with some scrap metal that was melted down to form steel and the entire batch of steel was contaminated. In another instance, a static eliminator bar with 22.5 millicuries of americium-241 was sent to a sanitary landfill over which the NRC has no jurisdiction. There have been other types of incidents involving NRC generally licensed devices including damaged devices, leaking or contaminated sources, and equipment malfunctions. However, lose of accountability, as occurred above, remains the most frequent incident and the predominant concern.

Because of these occurrences, the NRC's Office of Nuclear Material Safety and Safeguards (NMSS) conducted a radiological risk assessment addressing storage of devices in warehouses, disposal in scrap yards, incineration of waste, melting in a smelter, and disposal in a landfill. NMSS included in the risk assessment an incident at a steel company in 1983 (discussed in NUREG–1188, "The Auburn Steel Company Radioactive Contamination Incident") that probably represents a worst-case scenario for generally licensed gauging devices. Although individual doses were low and within prescribed limits for exposure of members of the public, they nevertheless represent unnecessary additional public exposure that could have been avoided. In addition, the cleanup costs were in excess of four million dollars with additional costs incurred for the staff efforts of regulatory agencies.

In consideration of both the risk assessment and incidents like those noted above, the NRC conducted a three-year sampling (1984 thru 1986) of general licensees (taken from the vendor's quarterly reports) to determine whether there was an accounting problem with gauge users under general licenses, and if so, what remedial action might be necessary. The sampling was conducted both by telephone calls and site visits. The sampling revealed several areas of concern regarding the use of radioactive material under the general license provisions. On the basis of the sampling, the NRC concluded that is: (1) A lack of awareness of appropriate regulations on the part of the user (general licensee) and (2) inadequate handling and accounting for these generally licensed devices. The NRC further concluded that these two problems could be remedied by more frequent and timely contact between the general licensee and the NRC. This conclusion by the NRC provides the basis for the regulatory changes proposed in this action.

An estimated 70,000 Agreement State licensees use the types of sources and devices covered by the amendments being proposed today for the NRC's general licensees. Consequently, the States will play an important role in achieving improved regulatory oversight on a national basis. Many of the States already have accountability programs in place. The Agreement States participated in the development of this rule and indicated agreement with the concept of the proposed rule. Specific comments from the Agreement States were adopted except for suggestions that the NRC charge general licensees fees and that there is no need for a standard format for submitting information. The fee issue will be addressed separately. The proposed rule provides flexibility in the use of the standard format.

The Commission is considering making the amendments a matter of compatibility for the States. The NRC staff has suggested that the amendments be categorized as Division 2 level of compatibility. This level of compatibility requires that States address provisions in NRC regulations relating to basic principles of radiation safety and regulatory functions without necessarily using identical language. States may also adopt requirements more restrictive than NRC rules under this level of compatibility. The Commission would appreciate comments on this suggestion.

An estimated 35,000 persons use certain measuring, gauging, or controlling devices under the NRC's general license. NRC regulations that affect these general licensees' responsibilities and that are presently being amended are 10 CFR 31.2, 31.4, 31.5, and 31.6. Under 10 CFR 31.2, "Terms and Conditions," all general licensees are subject to certain provisions of part 30 and also parts 19, 20, and 21. The proposed revision to § 31.2 would also subject all general licensees to the requirements of 10 CFR 30.9, "Completeness and Accuracy of Information," which imposes certain requirements regarding the completeness and accuracy of the information submitted to the NRC by licensees not now imposed upon general licensees.

Section 31.4 of 10 CFR part 31, "Information Collection Requirements: OMB approval," lists the various sections of part 31 that contain approved information collection requirements. Paragraph (b) of § 31.4 is being amended to add § 31.6 to the approved listing.

Section 31.5, "Certain measuring, gauging or controlling devices," provides for a general licensee to acquire, receive, possess, use, or transfer byproduct materials. It also specifies the responsibilities of general licensees regarding the use of byproduct materials. Under the proposed revisions a new paragraph (c)(11) would be added to require the general licensee to provide specific information to the NRC upon request. This information would include the complete name and address; specific information about the device, such as manufacturer, model number, and number of devices; name, title, and telephone number of the person responsible for controlling the use of the device; the address where the device is located or used; and whether the specific requirements of paragraph (c) of § 31.5 have been met. In addition, a proposed revision to paragraph (b) of § 31.5 would delete all references to specific licenses issued by Agreement States that authorize distribution of devices to persons generally licensed by Agreement States.

The registration and verification system contained in the proposed amendments to 10 CFR parts 31 and 32 will include all general licensees, including those who previously acquired radioactive sources. If older sources are transferred, they would be subject to the same requirements as newer sources and the registration system is intended

to capture them. General licensee transfers of sources are limited to either transfer to specific licensees or other general licensees by the existing provisions of 10 CFR 31.5(c) (8) and (9). In both cases, licensees must notify the NRC of the transfers. If the specific licensee is a 10 CFR part 32 or Agreement State equivalent distributor, the reporting requirements of the proposed rule would apply to any subsequent transfers. The current NRC data base, although limited, includes identification of general licensees who acquired gauges as early as 1959. The NRC staff plans to contact these licensees and any new general licensee as part of the enhanced oversight effort.

At present, 10 CFR 31.6, "General license to install devices generally licensed in § 31.5," provides a general license to certain specific licensees from Agreement States to install or service devices used under § 31.5. The current regulation, 10 CFR 31.6, is not clear with respect to time restrictions. 10 CFR 150.20(b)(3), imposes a 180-day-per-calendar-year limitation on the activities of Agreement State Licensees in non-Agreement States. The proposed amendments to § 31.6 would remove this restriction for § 31.5 licensees. This change will be convenient to the NRC, Agreement States, and manufacturers because it will reduce and simplify paper work without increasing the risk to public health and safety. The proposed § 31.6(a) would require the general licensee holding a specific license from an Agreement State to report to the NRC all persons receiving a device from the licensee, as specified in the accompanying proposed revision to § 32.52. Proposed § 31.6(d) would require the licensee to supply each of the recipients of a generally licensed device a copy of the general license contained in § 31.5. Proposed § 31.6(e) would require that written instructions and precautions be provided to persons servicing a generally licensed device. Proposed § 31.6(f) would also require a person performing routine installation/servicing/relocation of these devices to notify the appropriate NRC regional office at least 3 working days prior to the start of the activities. This notification would allow for a level of periodic inspection of those activities that intentionally place a worker in direct contact with the device or an unshielded radiation source. It is not intended that the prior notification requirement apply in cases where a radiological hazard due to an accident or a malfunction of the device exists. To be consistent with the proposed modifications, the section heading would be amended to read "General license to distribute, install, and service devices generally licensed in § 31.5."

10 CFR 32.51a, "Same: Conditions of licenses," presently imposes conditions on applicants for a specific license to manufacture or initially transfer generally licensed devices to general licensees. The addition of proposed paragraph (c) to § 32.51a would require such specific licensees to provide recipient users of generally licensed devices with written instructions and precautions to ensure that the devices are used safely. In addition, these specific licensees would be required to provide those users with information regarding testing requirements, transfer and reporting requirements, and disposal options for the devices being transferred.

10 CFR 32.52, "Material transfer reports and records," currently requires specific licensees authorized to distribute devices to general licensees to file transfer reports with the NRC on a quarterly basis. The revised regulation would prescribe the format to be used when submitting transfer reports to the NRC. The proposed format would provide more detailed and complete information about the general licensee to whom the device is transferred. The format is presented in proposed subpart E, § 32.310. Licensees who do not use the prescribed format would be permitted to provide all of the information required by the format on a clear and legible record. In addition, specific licensees would be required to identify a person responsible for meeting the requirements associated with the possession of the generally licensed device rather than simply identifying a point of contact at the general licensee's location.

After receipt of the quarterly transfer reports from the specific licensee under § 32.52, the NRC would send letters to the general licensees who received the devices during the preceding reporting period requesting them to verify in writing that they had purchased the devices containing byproduct material and that they understand the requirements of the general license. The general licensee under proposed § 31.5(c)(11)(ii) would be required to respond to the NRC by letter and to verify safety-related information about the device and its location. Thereafter, notices would be sent periodically to the general licensees requesting that they verify that they still have the device, verify the safety-related information, and remind them of their regulatory responsibilities in using the device. The frequency of these letters may range from 1 to 3 years. Any failure to respond or any reports of lost devices would initiate NRC follow-up action. This contact between the NRC and the general licensee would allow the NRC to validate and update the information currently contained in the data base that the NRC maintains for its general licensees.

Although these proposed requirements would impose additional costs on licensees, the Commission has estimated these to be nominal (on the order of $10 per device). Accordingly, the Commission believes that the increased compliance by general licensees and confidence in the appropriateness of the general license program potentially afforded by these new requirements outweigh this cost. Nonetheless, the Commission particularly requests comments on this matter.

At the time of the final rulemaking on this matter, the Commission intends to provide for an interim enforcement policy to supplement the current Enforcement Policy in 10 CFR part 2, appendix C, to address violations arising from the proposed regulations. The interim policy would remain in effect for one cycle of the notice and response program, approximately three years. Under the existing NRC Enforcement Policy, significant violations such as those involving lost sources may result in escalated action including civil penalties. The interim policy would provide that in the initial phase of the implementation of a notice and response program, enforcement action would not normally be taken for violations identified by a licensee in submitting information pursuant to the proposed regulation provided appropriate corrective action is initiated. This change from the Commission's normal enforcement policy in 10 CFR part 2, appendix C, is to remove any disincentive to identify deficiencies caused by a concern of potential enforcement action. This action would be taken to encourage general licensees to search their facilities to assure sources are located, to determine if applicable requirements have been met, and to develop appropriate corrective action when deficiencies are found. However, enforcement action will be considered for violations involving the failure to provide the information requested or take appropriate corrective actions or willful violations including the submittal of false information. Sanctions in those situations may include civil penalties as well as orders to limit or revoke the

authority to possess radioactive sources under a general license.

Environmental Impact: Categorical Exclusion

The NRC has determined that the proposed regulations are the type of action described in the categorical exclusion 10 CFR 51.22(c)(3)(iii). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

Paperwork Reduction Act Statement

The proposed rule amends the information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This proposed rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

The public reporting burden for this collection of information is estimated to average about 20 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0016 and 3150–0001), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The NRC has prepared a draft regulatory analysis of this proposed regulation. The analysis examines the cost and benefits of the alternatives considered by the NRC. The draft analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the draft analysis may be obtained from Joseph J. Mate, Officer of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301–492–3795.

Regulatory Flexibility Certification

Based on information available at this stage of the rulemaking proceeding and in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the NRC certifies that, if promulgated, this rule will not have a significant economic impact on a substantial number of small entities. The NRC has adopted size standards that classify a small entity as one whose gross annual receipts do not exceed $3.5 million over a 3-year period. The proposed rule affects about 35,000 persons using products under this general license, many of whom would be classified as a small entity. However, the NRC believes that the economic impact of the proposed requirements on any general licensee would be negligible. The proposed rule is being issued to better ensure that the general licensees understand and comply with regulatory responsibilities regarding the generally licensed radioactive devices in their possession.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to these proposed rules and therefore a backfit analysis is not required because these proposed amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in:

10 CFR Part 31

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, and Scientific equipment.

10 CFR Part 32

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements, and Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 31 and 32.

PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

1. The authority citation for part 31 is revised to read as follows:

Authority: Secs. 81, 161, 183, 68 Stat. 935, 948, 954, as amended (42 U.S.C. 2111, 2201, 2233); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Section 31.6 also issued under sec. 274, 73 Stat. 688 (42 U.S.C. 2021).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 31.5 (c)(1)–(3) and (5)–(9), 31.6, 31.8(c), 31.10(b), and 31.11(b), (c), and (d) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b); and §§ 31.5 (c)(4), (5), (8), and (11), 31.6 (d)–(f), and 31.11(b) and (e) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. Section 31.2 is revised to read as follows:

§ 31.2 Terms and Conditions.

The general licenses provided in this part are subject to the provision of §§ 30.9, 30.14(d), 30.34(a) to (e), 30.41, 30.51 to 30.63, and parts 19, 20, and 21 of this chapter [1] unless indicated otherwise in the language of the general license.

3. In § 31.4 paragraph (b) is revised to read as follows:

§ 31.4 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 31.5, 31.6, 31.8, and 31.11.

* * * * *

4. In § 31.5, paragraph (b) is revised and paragraph (c)(11) is added to read as follows:

§ 31.5 Certain measuring, gauging, or controlling devices.[2]

* * * * *

(b) The general license in paragraph (a) of this section applies only to byproduct material contained in devices that have been manufactured or initially transferred and labeled in accordance with the specifications contained in a specific license issued pursuant to § 32.51 of this chapter or in accordance with the specifications contained in the general license of § 31.6.

(c) * * *

(11) Shall respond within 30 calendar days of receipt of a request from the Nuclear Regulatory Commission to verify the following information and any other such information as may be requested by the Commission as it relates to the general license. Further, the general licensee shall notify the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555 within 30 calendar days if any of the requested information should change.

(i) Name and complete address of the general licensee.

(ii) Identification of specific information about the device, such as: the manufacturer, model number, the

[1] Attention is directed particularly to the provisions of the regulations in part 20 of this chapter that relate to the labeling of containers.

[2] Persons possessing byproduct material in devices under a general license in § 31.5 before January 15, 1975, may continue to possess, use, or transfer that material in accordance with the labeling requirements of § 31.5 in effect on January 14, 1975.

number of devices, type of isotope, and who has performed what service on the device since the last report concerning the device was submitted to the NRC.

(iii) Name, title, and telephone number of the person who is responsible for the device and for ensuring compliance with the appropriate regulations and requirements.

(iv) Address at which the device is located or used.

(v) Whether the requirements of § 31.5(c)(1) through (c)(10) have been met.

* * * * *

5. Section 31.6 is amended by revising the section heading and the introductory paragraph and by adding paragraphs (a), (d), (e), and (f) to read as follows:

§ 31.6 General license to distribute, install, and service devices generally licensed in § 31.5.

Any person who holds a specific license by an Agreement State authorizing the holder to manufacture, distribute, install, or service devices described in § 31.5 within the Agreement State is hereby granted a general license to distribute, install, or service the devices in any non-Agreement State for an unlimited period of time and a general license to distribute, install, or service the devices in offshore waters, as defined in § 150.3(f), provided that:

(a) The Agreement State licensee files the appropriate transfer reports as required by paragraphs (a) and (b) of § 32.52.

* * * * *

(d) The person shall furnish a copy of the general license contained in § 31.5 of this chapter to each person who is responsible for the byproduct material and for ensuring compliance with the appropriate regulations and requirements.

(e) The person shall provide the individual responsible for service of the device with written instructions and precautions necessary to ensure its safe installation, operation, and service. These instructions shall include leak-testing requirements, transfer and reporting requirements, disposal options, including possible costs and reporting requirements for lost or damaged devices.

(f) The person performing routine service/installation or relocation of devices shall notify the appropriate NRC Regional Office listed in Appendix D of part 20 of this chapter at least 3 working days prior to engaging in such activities in Non-Agreement States. The notification shall include the date and location of the activity that will be performed. Prior notification does not apply in cases where a radiological hazard due to an accident or malfunction of the device exists.

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

6. The authority citation for part 32 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 32.13, 32.15 (a), (c), and (d), 32.19, 32.25 (a) and (b), 32.29 (a) and (b), 32.54, 32.55 (a), (b), and (d), 32.58, 32.59, 32.62, and 32.210 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201 (b)); and §§ 32.12, 32.16, 32.20, 32.25(c), 32.29(c), 32.51a, 32.52, 32.56, and 32.210 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

7. Section 32.51a is amended by adding paragraph (c) to read as follows:

§ 32.51a Same: Conditions of licenses.

* * * * *

(c) Furnish the individuals identified under § 31.5(c)(11) or § 31.6(d) with written instructions and precautions necessary to ensure safe installation, operation, and service of the device. These instructions must include the leak-testing requirements, transfer and reporting requirements, disposal options including possible costs, and reporting requirements for lost or damaged devices.

8. Section 32.52 is revised to read as follows:

§ 32.52 Same: Material transfer reports and records.

Each person licensed under § 32.51 or § 31.6 to initially transfer devices to generally licensed persons shall:

(a) Report quarterly to the Director of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and send a copy of the report to the appropriate NRC regional office listed in appendix D of part 20 of this chapter all transfers of such devices to persons for use under the general license in § 31.5 of this chapter. The report must be provided either in the format presented in subpart E, § 32.310, "Transfer Report Format," or on a clear and legible record as long as all of the data required by the format is included. If one or more intermediate persons temporarily possesses the device at the intended place of use prior to its possession by the user, the report must include the same information for each intermediary as in subpart E, § 32.310, and clearly designate that person as an intermediary. If no transfers have been made to persons generally licensed under § 31.5 during the reporting period, the report must so indicate. The report must cover each calendar quarter and must be filed within 30 days of the end of the calendar quarter.

(b) Report quarterly to the responsible Agreement State agency all transfers of such devices to persons for use under a general license in an Agreement State's regulations that are equivalent to § 31.5. The report must be provided either in the format in subpart E, § 32.310, "Transfer Report Format," or on a clear and legible record as long as all of the data required by the format is included. If one or more intermediate persons temporarily possesses the device at the intended place of use prior to its possession by the user, the report must include the same information for each intermediary as in subpart E, § 32.310, and clearly designate that person as an intermediary. If no transfers have been made to persons generally licensed under § 31.5 during the reporting period, the report must so indicate. The report must cover each calendar quarter and must be filed within 30 days of the end of the calendar quarter.

(c) Keep records of all transfers of such devices for each general licensee and in compliance with the above reporting requirements of § 32.52. Records required by this section must be maintained for a period of 5 years from the date of the recorded event.

9. Subpart E, § 32.310 is added to 10 CFR part 32 to read as follows:

Subpart E—Report of Transfer of Byproduct Materials

§ 32.310 Transfer Report Format.

This section contains the format required by § 32.52.

BILLING CODE 7590-01-M

Subpart E-Report of Transfer of Byproduct Materials

Section 32.310 - Transfer Report Format

NAME OF VENDOR AND LICENSE NUMBER	REPORTING PERIOD	
	FROM	TO

GENERAL LICENSEE INFORMATION	
COMPANY NAME, STREET, CITY, STATE, ZIP CODE	DEPARTMENT

PERSON RESPONSIBLE FOR CONTROL OF THE DEVICE	
NAME AND TITLE	TELEPHONE NUMBER

FOR EACH DEVICE PROVIDE THE FOLLOWING

MODEL NUMBER	SERIAL NUMBER	ISOTOPE	ACTIVITY AND UNITS

BILLING CODE 7590-01-C

Subject: Requirements for the Possession of Industrial Devices Containing Byproduct Material (RIN 3150–AD34).

Dated at Rockville, Maryland this 12th day of December 1991.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 91–30829 Filed 12–26–91; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–CE–73–AD]

Airworthiness Directives; deHavilland Model DHC–3 Otter Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to deHavilland Model DHC–3 Otter airplanes that have a Servo-Aero Engineering 20000 Series Kit installed on a Pratt & Whitney PT6A–135/135A engine. This proposed action would require a one-time inspection to ensure existence and correct assembly of the fuel condition lever lock, and, if not existent or incorrectly assembled, installation in accordance with the applicable service information. If the fuel condition lever lock is not existent or incorrectly assembled, inadvertent engine shutdown could occur. The actions specified in this proposed AD are intended to prevent loss of control of the airplane caused by inadvertent engine shutdown.

DATES: Comments must be received on or before February 3, 1992.

ADDRESSES: Servo-Aero Engineering Service Bulletin SB001, dated July 24, 1990, may be obtained form Servo-Aero Engineering Inc., 37 Mortensen Avenue, Salinas, California 93905; Telephone (408 422–7866). This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–73–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Chinh Vuong, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3329 E. Spring Street, Long Beach, California 90806–2425; Telephone (213) 988–5264; Facsimile (213) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–CE–73–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Transport Canada, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain deHavilland Model DHC–3 Otter airplanes that have a Servo-Aero Engineering 20000 Series Kit installed on a Pratt & Whitney PT6A–135/135A engine. Transport Canada advises that some of the Pratt & Whitney Canada PT6A–135/135A engines that have been modified in accordance with either Supplemental Type Approval (STA) SA 89–32 or Supplemental Type Certificate (STC) SA 3777NM do not have a fuel condition lever lock installed. If the fuel condition lever lock is not installed or is incorrectly assembled, then the engine can inadvertently shutdown and result in loss of control of the airplane.

Servo-Aero Engineering Inc. has issued Service Bulletin SB001, dated July 24, 1991, which specifies instructions for installing the fuel condition level lock, part number (P/N) 20037–18. Transport Canada classified this service bulletin as mandatory and issued Transport Canada AD DV–912–16, dated June 11, 1991, in order to assure the airworthiness of these airplanes in Canada. The airplanes are manufactured in Canada and are type certificated for operation in the United States. Pursuant to a bilateral airworthiness agreement, Transport Canada has kept the FAA totally informed of the above situation.

The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Since this condition could exist or develop in other deHavilland Model DHC–3 Otter airplanes that have a Servo-Aero Engineering 20000 Series Kit installed on a Pratt & Whitney PT6A–135/135A engine of the same type design, the proposed AD would require a one-time inspection to ensure existence and correct assembly of the fuel condition lever lock, and, if not existent or incorrectly assembled, installation in accordance with the instructions in Servo-Aero Service Bulletin SB001, dated July 24, 1991.

It is estimated that 2 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 hours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts are provided by the manufacturer at no cost. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $440.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034), February 26, 1979); and (3) if

promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of its may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new AD:

deHavilland: Docket No. 91–CE–73–AD.

Applicability: Model DHC–3 Otter airplanes (all serial numbers) that have a Servo-Aero Engineering 20000 Series Kit installed on a Pratt & Whitney PT6A–135/135A engine, certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent loss of control of the airplane caused by inadvertent engine shutoff, accomplish the following:

(a) Visually inspect the Pratt & Whitney PT6A–135/135A engine to ensure that a fuel condition lever lock, part number (P/N) 20037–18, is installed and ensure that it is correctly assembled in accordance with the instructions in Servo-Aero Service Bulletin SB001, dated July 24, 1990.

(1) If a fuel condition lever lock is installed and is correctly assembled in accordance with the instructions in Servo-Aero Service Bulletin SB001, dated July 24, 1990, return the airplane to service.

(2) If a fuel condition lever lock is not installed or is not assembled in accordance with the instructions in Servo-Aero Service Bulletin SB001, dated July 24, 1990, prior to further flight, install a fuel condition lever position lock, (P/N) 20037–18, in accordance with the instructions in Servo-Aero Service Bulletin SB001, dated July 24, 1990.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Los Angeles Aircraft Certification Office, 3329 E. Spring Street, Long Beach, California 90806–2425. The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to Servo-Aero Engineering Inc., 37 Mortensen Avenue, Salinas, California 93905; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on December 19, 1991.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91–30921 Filed 12–26–91; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–78–91]

RIN 1545–AQ07

Procedure for Monitoring Compliance with Low-Income Housing Credit Requirements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the requirement that State allocation plans provide a procedure for State and local housing credit agencies to monitor for compliance with the requirements of section 42 of the Internal Revenue code and report any noncompliance to the Internal Revenue Service. These regulations affect State and local housing credit agencies, owners of buildings or projects for which the low-income housing credit is claimed, and taxpayers claiming the low-income housing credit.

DATES: Written comments must be received by February 25, 1992. Requests to appear at a public hearing scheduled for March 4, 1992, and outlines of oral comments must be received by February 19, 1992. See notice of hearing published elsewhere in this issue of the **Federal Register**

ADDRESSES: Send comments, requests to appear at the public hearing, and outlines to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, [Attn: CC:CORP:T:R (PS–78–91), room 5228), Washington, DC 20044. In the alternative, comments, requests to appear at the public hearing, and outlines may be hand delivered to: CC:CORP:T:R (PS–78–91), Internal Revenue Service, room 5228, 1111 Constitution Ave., NW., Washington, DC 20224. The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Paul F. Handleman, (202) 377–6349 (not a toll-free call). Concerning the hearing, Bob Boyer, Regulations Unit, (202) 566–3935 (not a toll–free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224.

The collection of information in this proposed regulation is contained in § 1.42–5. This information is required by the Internal Revenue Service because State and local housing credit agencies are required under section 42 (m)(1)(B)(iii) to monitor for compliance with the requirements of section 42 and report any noncompliance to the Internal Revenue Service. Noncompliance is reported by the agencies on form 8823, Low-Income Housing Credit Agencies Report of Noncompliance. Form 8823 was submitted to the Office of Management and Budget under control number 1545–1204. The likely respondents/recordkeepers are individuals, State and local governments, business or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

These estimates are an approximation of the average time expected to be necessary for the collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their

particular circumstances. Estimated total reporting and/or recordkeeping burden: 18,750 hours. The estimated annual burden per State or local government respondent/recordkeeper varies from 10 hours to 1,500 hours, with an estimated average of 250 hours. The estimated annual burden for all other respondent/recordkeepers varies from .5 hours to 3 hours, with an estimated average of 1 hour. Estimated number of State or local government respondents/recordkeepers: 55. Estimated number of all other respondents/recordkeepers: 5,000. Estimated annual frequency of State or local government responses (for reporting requirement only): As necessary. Estimated annual frequency of all other responses (for reporting to State or local government requirement only): 1.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 42 of the Internal Revenue Code of 1986. These amendments are proposed to provide guidance on section 42 (m)(1)(B)(iii). Section 42 (m)(1)(B)(iii), which was amended and renumbered by the Revenue Reconciliation Act of 1990, is effective on January 1, 1992, and applies to all buildings placed in service for which the low-income housing credit determined under section 42 is, or has been, allowable at any time.

Section 42 provides for a low-income housing credit that may be claimed as part of the general business credit under section 28. The credit determined under section 42 is allowable only to the extent the owner of a qualified low-income building receives a housing credit allocation from a State or local housing credit agency ("Agency"), unless the building is exempt from the allocation requirement by reason of section 42 (h)(4)(B). Under section 42 (m)(1)(A), the housing credit dollar amount for any building is zero unless the amount was allocated pursuant to a qualified allocation plan of the Agency. Similarly, under section 42 (m)(1)(D), the housing credit dollar amount for any project qualifying under section 42 (h)(4) is zero unless the project satisfies the requirements for allocation of a housing credit dollar amount under the qualified allocation plan of the Agency. Under section 42 (m)(1)(B)(iii), an allocation plan is not qualified unless it contains a procedure that the Agency (or an agent of, or private contractor hired by, the Agency) will follow in monitoring compliance with the provisions of section 42 and notifying the Internal Revenue Service of any noncompliance of which the Agency becomes aware.

Explanation of Provisions

A. In General

The proposed regulations provide guidance on section 42(m)(1)B)(iii). Under the proposed regulations, an allocation plan meets the requirement of section 42(m)(1)(B)(iii) if it includes a monitoring procedure that contains, in substance, all of the provisions specified in the regulations.

The specified provisions are minimum requirements; a monitoring procedure may contain additional provisions or requirements. Moreover, the language, form, and order of the specified provisions as set forth in the regulations need not be exactly duplicated in an allocation plan in order for the plan to include a monitoring procedure as required by the regulations. As long as the substance of the provisions specified in the regulations is contained in the allocation plan as a whole, the allocation plan includes the monitoring procedure required by the regulations.

B. Provisions of Monitoring Procedure

1. In General

Under the regulations, a monitoring procedure must contain recordkeeping and record retention provisions, certification and review provisions, an auditing provision, and provisions for notifying owners and the Internal Revenue Service of noncompliance or lack of certification.

2. Recordkeeping and Record Retention

A monitoring procedure must require the owner of a low-income housing project to keep records for each building in the project showing the total number of residential rental units in the building, the percentage of low-income units in the building, the rent charged on each residential rental unit in the building, the low-income unit vacancies in the building and the rentals of the next available units, the low-income certification of each low-income tenant and documentation to support that certification, and the character and use of the nonresidential portion of the building included in the building's eligible basis under section 42(d) (*e.g.*, tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project). These records should already be kept by all owners, since they are necessary to calculate how much credit, if any, can be claimed.

A monitoring procedure must require the records for a building to be kept a minimum of 6 years beyond the end of the compliance period of the building. The records should be kept until this date in any event, because a portion of the credit claimed for a building may be recaptured during the compliance period under certain circumstances.

3. Certification and Review

A monitoring procedure must require the owner of a low-income housing project to certify at least annually to the Agency under penalty of perjury that the project meets the requirements of the 20–50 test under section 42(g)(1)(A), the 40–60 test under section 42(g)(1)(B), or the 25–60 test under sections 42(g)(4) and 142(d)(6) for New York City, whichever minimum set-aside test is applicable to the project, and the 15–40 test under sections 42(g)(4) and 142(d)(4)(B) for "deep rent skewed" projects, if applicable to the project. In addition, the monitoring procedure must require the owner to certify to the Agency under penalty of perjury that the owner has received an annual low-income certification from each low-income tenant and documentation to support that certification, that each low-income unit is rent-restricted under section 42(g)(2), that all units in the project are for use by the general public and are used on a nontransient basis, that each building in the project is suitable for occupancy taking into account local health, safety, and building codes, that there has been no change in any building's eligible basis under section 42(d) (or that there has been a change, with an explanation of the nature of the change), that all tenant facilities included in the eligible basis of any building in the project are provided on a comparable basis without a separate fee to all tenants in the building, that if a low-income unit in the project becomes vacant during the year reasonable attempts are made to rent that unit to tenants having a qualifying income and while the unit is vacant no units of comparable or smaller size are rented to tenants not having a qualifying income, and that if the income of tenants of low-income units increases above the limit allowed in section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size will be rented to tenants having a qualifying income. Periodic certifications for a building must be required at least through the end of the building's 15-year compliance period.

In addition to requiring periodic certifications, a monitoring procedure must provide that the Agency will review, in at least one of two ways, certain records kept by low-income housing project owners. The monitoring procedure must require (1) that the owner of a low-income housing project

send to the Agency each year a copy of the annual low-income certification from each low-income tenant and a copy of the documentation the owner has received to support that certification, or (2) that the Agency inspect a reasonable number of low-income housing projects each year, and that the inspection include at a minimum a review on-site of the tenant low-income certifications for that year and the documentation the owner has received to support those certifications. If an Agency chooses to include the second of these review provisions in its monitoring procedure, the low-income housing projects to be inspected must be chosen in a manner that will not give owners advance notice that their records for a particular year will or will not be inspected. However, an Agency may give an owner reasonable notice that an inspection will occur so that the owner may assemble records.

A monitoring procedure may, however, exempt from the certification and review provisions certain buildings that are subject to other monitoring programs than that required under section 42(m)(1)(B)(iii). Buildings that may be exempted are buildings financed the Farmers Home Administration (FmHA) under its section 515 program and buildings of which 50 percent or more of the aggregate basis (taking into account the building and the land) is financed with the proceeds of tax-exempt bonds. However, the monitoring procedure must require the owner of any exempted building to certify to the Agency on at least an annual basis under penalty of perjury that the building complies with the requirements for FmHA assistance or tax-exempt bond financing, as applicable, and that the minimum set-aside, income, rent and suitability-for-occupancy requirements of section 42 are also met. Additionally, the monitoring procedure must require the owner of an exempted building to inform the Agency if the owner would be unable to make one or more of the required certifications.

4. Auditing

A monitoring procedure must provide that the Agency has the right to perform as audit of any low-income building at least during the 15-year compliance period of the building. An audit includes an inspection of the building as well as a review of the records described in the recordkeeping portion of the regulations. The auditing provision is required in addition to the review of low-income certifications and documentation described above.

5. Notification

A monitoring procedure must provide that the Agency is to notify the owner of a low-income housing project in writing as soon as possible if the Agency does not receive the required certification, or if the Agency discovers on audit, inspection or review, or in some other manner, that the project is not in compliance with the provisions of section 42.

A monitoring procedure must provide that the owner has an opportunity to supply missing certification or to correct noncompliance within a correction period. The correction period must be specified in the monitoring procedure and cannot exceed 90 days from the date of the notice to the owner. However, a monitoring procedure may provide for extensions of up to six months, but only if the extension is based on a determination by the Agency that there is good cause for granting the extension.

A monitoring procedure must provide that the Agency is to notify the Internal Revenue Service of an owner's noncompliance or failure to certify no later than 45 days after the end of the allowed time for correction, whether or not the noncompliance or failure to certify is corrected. The Agency is to notify the Internal Revenue Service by filing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance. The Agency must explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify.

If a building goes entirely out of compliance with section 42, so that no credit is allowable for the building for the taxable year or in any future taxable year during the compliance period, the Agency need not file Form 8823 in every subsequent year to report the noncompliance. Instead, the Agency may file a single Form 8823 for the building when the Agency becomes aware that the building has gone entirely out of compliance, provided that the Agency reports on the form that the building is entirely out of compliance and will not be in compliance in the future.

C. Agency Delegation of Monitoring Function

Section 42(m)(1)(B) and § 1.42-5(f) allow an Agency to retain an agent or other private contractor to perform compliance monitoring. In this event, the agent or other private contractor may be delegated the functions of the Agency to monitor compliance, except for the responsibility of filing Form 8823. For example, the agent or other private contractor may be delegated the responsibility of inspecting low-income housing projects each year, the right to inspect buildings and audit records, and the responsibility of notifying building owners of noncompliance. The agent or other private contractor must notify the Agency of any noncompliance or failure to certify and the Agency must, in turn, notify the Internal Revenue Service no later than 45 days after the end of the allowed time for correction.

An Agency that delegates compliance monitoring to an agent or other private contractor must use reasonable diligence to ensure that the agent or other private contractor properly performs the delegated monitoring functions. In addition, delegation by an Agency of compliance monitoring functions to an agent or other private contractor does not relieve the Agency of its obligation to notify the Internal Revenue Service of any noncompliance of which the Agency becomes aware.

D. Fees

The proposed regulations do not address any issues relating to Agency fees. However, nothing in section 42 prohibits an Agency from charging a fee for covering the Agency's administrative expenses in monitoring for compliance.

E. Effective Date

These proposed regulations are proposed to be effective on the later of June 30, 1992 or 90 days after these regulations are published in final form. However, the requirement of section 42(m)(1)(B)(iii) that allocation plans provide a monitoring procedure is effective January 1, 1992. Thus, allocation plans must comply with the statutory monitoring requirement as of that date.

Both section 42(m)(1)(B)(iii) and these regulations apply to all buildings placed in service for which the low-income housing credit is, or has been, allowable at any time. Neither section 42(m)(1)(B)(iii) or these regulations, however, require monitoring for whether a building or project is in compliance with the requirements of section 42 prior to January 1, 1992.

These proposed regulations contain minimum compliance monitoring requirements and in no way preclude an Agency from formulating and applying monitoring procedures that are stricter than those set forth in these regulations. For example, an Agency may wish to require that other types of records be kept by owners of low-income housing projects, or other certifications be made,

in addition to those described in the regulations, or an Agency may wish to do regular on-site inspections of projects and audits of any records required to be kept.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests to Appear at Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held on March 4, 1992. See notice of hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of these regulations is Paul F. Handleman, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, other personnel from the Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR 1.37–1 through 1.44A–1

Credits, Income taxes, Reporting and Recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority for part 1 is amended by adding the following citation:

Authority: Sec. 7805, 68A Stat. 917 (26 U.S.C. 7805) * * * Section 1.42–5 is also issued under 26 U.S.C. 42(n) * * *

Par. 2. New § 1.42–5 is added to read as follows:

§ 1.42–5 Monitoring compliance with low-income housing credit requirements.

(a) *Compliance monitoring requirement*—(1) *In general.* Under section 42(m)(1)(B)(iii), an allocation plan is not qualified unless it contains a procedure that the State or local housing credit agency ("Agency") (or an agent of, or other private contractor hired by, the Agency) will follow in monitoring for noncompliance with the provisions of section 42 and in notifying the Internal Revenue Service of any noncompliance of which the Agency becomes aware.

(2) *Requirements for a monitoring procedure.* A procedure for monitoring for noncompliance under section 42(m)(1)(B)(iii) must contain—

(i) The recordkeeping and record retention provisions of paragraph (b) of this section;

(ii) The certification and review provisions of paragraph (c) of this section;

(iii) The auditing provision of paragraph (d) of this section; and

(iv) The notification-of-noncompliance provisions of paragraph (e) of this section.

A monitoring procedure will meet the requirements of section 42(m)(1)(B)(iii) if it contains the substance of these provisions. The particular order and form of the provisions in the allocation plan is not material. A monitoring procedure may contain additional provisions or requirements.

(b) *Recordkeeping and record retention provisions*—(1) *Recordkeeping provision.* Under the recordkeeping provision, the owner of a low-income housing project must be required to keep records for each qualified low-income building in the project showing—

(i) The total number of residential rental units in the building;

(ii) The percentage of residential rental units in the building that are low-income units;

(iii) The rent charged on each residential rental unit in the building;

(iv) The low-income unit vacancies in the building and the rentals of the next available units;

(v) The income certification of each low-income tenant;

(vi) Documentation to support each low-income tenant's income certification (for example, a copy of the tenant's federal income tax return, Forms W–2, or verifications of income from third parties such as employees or state agencies paying unemployment compensation); and

(vii) The character and use of the nonresidential portion of the building included in the building's eligible basis under section 42(d) (*e.g.*, tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the project).

(2) *Record retention provision.* Under the record retention provision, the owner of a low-income housing project must be required to retain the records described in paragraph (b)(1) of this section for each building in the project for at least 6 years beyond the end of the compliance period of the building.

(c) *Certification and review provisions*—(1) *Certification.* Under the certification provision, the owner of a low-income housing project must be required to certify to the Agency that—

(i) The project meets the requirements of the 20–50 test under section 42(g)(1)(A), the 40–60 test under section 42(g)(1)(B), or the 25–60 test under sections 42(g)(4) and 142(d)(6) for New York City, whichever minimum set-aside test is applicable to the project, and the 15–40 test under sections 42(g)(4) and 142(d)(4)(B) for "deep rent skewed" projects, if applicable to the project;

(ii) The owner has received an annual income certification from each low-income tenant and documentation to support that certification;

(iii) Each low-income unit in the project is rent-restricted under section 42(g)(2);

(iv) All units in the project are for use by the general public and are used on a nontransient basis;

(v) Each building in the project is suitable for occupancy, taking into account local health, safety, and building codes;

(vi) There has been no change in the eligible basis (as defined in section 42(d)) of any building in the project, or that there has been a change, and the nature of the change;

(vii) All tenant facilities included in the eligible basis under section 42(d) of any building in the project, such as swimming pools, other recreational facilities, and parking areas, are provided on a comparable basis without charge to all tenants in the building;

(viii) If a low-income unit in the project becomes vacant during the year, reasonable attempts are made to rent that unit to tenants having a qualifying income and while the unit is vacant no units of comparable or smaller size are rented to tenants not having a qualifying income; and

(ix) If the income of tenants of a low-income unit in the project increases above the limit allowed in section 42(g)(2)(D)(ii), the next available unit of

comparable or smaller size in the project will be rented to tenants having a qualifying income.

(2) *Review.* Under the review provision, a monitoring procedure must require—

(i) An owner of a low-income housing project to submit to the Agency each year a copy of the annual income certification from each low-income tenant and a copy of the documentation the owner has received to support that certification, or

(ii) The Agency to inspect a reasonable number of low-income housing projects each year, and review on-site the low-income tenant income certifications for that year and the documentation the owner has received to support those certifications.

If a monitoring procedure includes the review provision described in paragraph (c)(2)(ii) of this section, the low-income housing projects to be inspected must be chosen in a manner that will not give owners of low-income housing projects advance notice that their records for a particular year or will not be inspected. However, an Agency may give an owner reasonable notice that an inspection will occur so that the owner may assemble records, for example, 30 days advance notice of inspection. See paragraph (d) of this section for the auditing provision that is required to be included in all monitoring procedures.

(3) *Exceptions for certain buildings.* A monitoring procedure may provide that the certification and review provisions required under paragraphs (c) (1) and (2) of this section do not apply to certain low-income buildings subject to other monitoring programs. The following buildings may be exempted from paragraphs (c) (1) and (2) of this section:

(i) Buildings financed by the Farmers Home Administration (FmHA) under its section 515 program; and

(ii) Buildings of which 50 percent or more of the aggregate basis (taking into account the building and the land) is financed with the proceeds of obligations the interest on which is exempt from tax under section 103.

If a monitoring procedure exempts a building from paragraphs (c) (1) and (2) of this section, the procedure must require the owner of the building to certify to the Agency that the building complies with the requirements for FmHA assistance or tax-exempt bond financing, as applicable, and that the building also meets the minimum set-aside, income, rent, and suitability-for-occupancy requirements of section 42. Additionally, the monitoring procedure must require the owner of an exempted building to inform the Agency if the owner would be unable to make one or more of the certifications otherwise required under paragraph (c)(1) of this section.

(4) *Frequency and form of certification.* A monitoring procedure must require the certifications of paragraphs (c) (1) and (3) of this section to be made at least annually through the end of the 15-year compliance period under section 42(i)(1) and to be made underpenalty of perjury.

(d) *Auditing provision.* Under the auditing provision, the Agency must have the right to perform an audit of any low-income housing project at least through the end of the compliance period of the buildings in the project. An audit includes an inspection of nay building in the project, as well as a review of the records described in paragraph (b)(1) of this section. The auditing provision of this paragraph (d) is required in addition to any inspection of low-income certifications and documentation under paragraph (c)(2) of this section.

(e) *Notification-of-noncompliance provisions*—(1) *In general.* Under the notification-of-noncompliance provisions, the Agency must be required to give the notice described in paragraph (e)(2) of this section to the owner of a low-come housing project and the notice described in paragraph (e)(3) of this section to the Internal Revenue Service.

(2) *Notice to owner.* The Agency must be required to provide prompt written notice to the owner of a low-income housing project if the Agency does not receive the certification described in paragraph (c)(1) or (3) of this section or discovers on audit, inspection, or review, or in some other manner, that the project is not in compliance with the provisions of section 42.

(3) *Notice to Internal Revenue Service.* The Agency must be required to file Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance, with the Internal Revenue Service no later than 45 days after the end of the correction period (as described in paragraph (e)(4) of this section, including extensions permitted under that paragraph), whether or not the noncompliance or failure to certify is corrected. The Agency must explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. If an Agency reports on Form 8823 that a building has gone entirely out of compliance and will not be in compliance at any time in the future, the Agency need not file Form 8823 in subsequent years to report that building's noncompliance.

(4) *Correction period.* The correction period shall be that period specified in the monitoring procedure during which an owner must supply any missing certifications and bring the project into compliance with the provisions of section 42. The correction period is not to exceed 90 days from the date of the notice to the owner described in paragraph (e)(2) of this section. An Agency may extend the correction period for up to six months, but only if the Agency determines there is good cause for granting the extension.

(f) *Delegation of authority*—(1) *Agencies permitted to delegate compliance monitoring functions.* An Agency may retain an agent or other private contractor to perform compliance monitoring. In this case, the agent or other private contractor may be delegated the functions of the Agency to monitor compliance, except for the responsibility of notifying the Internal Revenue Service under paragraph (e)(3) of this section. For example, the agent or other private contractor may be delegated the responsibility of reviewing tenant certifications and documentation under paragraph (c)(2) of this section, the right to inspect buildings and audit records as described in paragraph (d) of this section, and the responsibility of notifying building owners of lack of certification or noncompliance under paragraph (e)(2) of this section. However, the agent or other private contractor must notify the Agency of any noncompliance or failure to certify.

(2) *Limitations.* An Agency that delegates compliance monitoring to an agent or other private contractor must use reasonable diligence to ensure that the agent or other private contractor properly performs the delegated monitoring functions. Delegation by an Agency of compliance monitoring functions to an agent or other private contractor does not relieve the Agency of its obligation to notify the Internal Revenue Service of any noncompliance of which the Agency becomes aware.

(g) *Liability.* Compliance with the requirements of section 42 is the responsibility of the owner of the building for which the credit is allowable. The Agency's obligation to monitor for compliance with the requirements of section 42 does not make the Agency liable for an owner's noncompliance.

(h) *Effective date.* Allocation plans must comply with these regulations as of the later of June 30, 1992, or 90 days after these regulations are published as final regulations. The requirement of

section 42 (m)(1)(B)(iii) that allocation plans contain a procedure for monitoring for noncompliance becomes effective on January 1, 1992, and applies to buildings placed in service for which a low-income housing credit is, or has been, allowable at any time. Thus, allocation plans must comply with section 42 (m)(1)(B)(iii) prior to the effective date of these regulations. Section 42 (m)(1)(B) and these regulations do not require monitoring for whether a building or project is in compliance with the requirements of section 42 prior to January 1, 1992.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91-30710 Filed 12-26-91; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 1

[PS-78-91]

RIN 1545-AQ07

Procedure for Monitoring Compliance With Low-Income Housing Credit Requirements; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed Income Tax Regulations relating to the requirement that State allocation plans provide a procedure for State and local housing credit agencies to monitor for compliance with the requirements of section 42 of the Internal Revenue Code and report any noncompliance to the Internal Revenue Service.

DATES: The public hearing will be held on Wednesday, March 4, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Wednesday, February 19, 1992.

ADDRESSES: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC: CORP:T:R (PS-78-91), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9231, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is regulations that contain amendments to the Income Tax Regulations (26 CFR part 1), under section 42 of the Internal Revenue Code. These amendments are proposed to provide guidance on section 42(m)(1)(B)(iii). These regulations appear in this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Wednesday, February 19, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-30711 Filed 12-26-91; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Part 301

[IA-98-91]

RIN 1545-AQ21

Disclosure of Tax Return Information for Purposes of Quality or Peer Review; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of public hearing on proposed regulations under section 7216(b)(3) relating to disclosures of tax return information for purposes of conducting quality of peer review.

DATES: The public hearing will be held on Wednesday, June 3, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Wednesday, May 20, 1992.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (IA-98-91), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-377-9236 or (202) 566-3935 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 7216(b)(3) of the Internal Revenue Code. The proposed regulations appear elsewhere in this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Wednesday, May 20, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91-30714 Filed 12-26-91; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 301

[IA-98-91]

RIN 1545-AQ21

Disclosure of Tax Return Information for Purposes of Quality or Peer Reviews

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations under section 7216(b)(3) relating to disclosures of tax return information for purposes of conducting quality or peer reviews. The proposed regulations would expand the purposes for which a quality or peer review may be conducted to include evaluating, monitoring and improving the quality of a tax return preparer's accounting and auditing services. These regulations are proposed under changes to the applicable law made by the Omnibus Budget Reconciliation Act of 1989.

DATES: Written comments must be received by May 1, 1992. A public hearing has been scheduled for June 3, 1992. Requests to speak at the hearing, along with outlines of oral comments must be received by May 20, 1992. See the notice of hearing published elsewhere in this issue of the Federal Register.

ADDRESSES: Send comments and requests for a public hearing to the Internal Revenue Service, Attn: CC: CORP:T:R: (IA-98-91) P.O. Box 7604, Ben Franklin Station NW., Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Attorney-Advisor, Office of the Assistant Chief Counsel (Income Tax and Accounting) at 202-566-5985 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR part 301) under section 7216(b)(3) of the Internal Revenue Code. Section 7216(b)(3) was amended by section 7739(a) of the Omnibus Budget Reconciliation. Act of 1989 ("OBRA 1989") (Pub. L. No. 101-239, 103 Stat. 2106, 2404) to require the issuance of regulations addressing the disclosure of tax return information for the purposes of quality or peer reviews.

On December 28, 1990, the Service issued regulations under section 7216(b)(3) in proposed and temporary form. (55 FR 53313, 55 FR 53295). Comments were received from the public and a public hearing was held on those regulations on June 3, 1991. The final regulations are published elsewhere in this issue of the Federal Register without any substantive change.

Explanation of Provision

The proposed regulations issued under section 7216(b)(3) on December 28, 1990, defined a quality or peer review as a review that is undertaken to evaluate, monitor, and improve the quality and accuracy of a tax return preparer's tax preparation services. Some commentators suggested that this definition is too restrictive. They noted that some preparers must undergo a review of their auditing and accounting services to satisfy government concerns. While these reviews are only incidentally related to tax return preparation, tax return information sometimes must be disclosed to properly complete the review. These commentators are concerned that this definition will not allow these reviews to be accomplished. In response to these comments, the proposed regulations issued today would expand the definition of a quality or peer review to include accounting and auditing services. These amendments are proposed to be effective on December 28, 1990.

Special analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of these regulations will be submitted to the Chief Counsel on Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

The Service intends to hold the public hearing on these regulations on June 3, 1992. Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably an original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. See notice of public hearing published elsewhere in this issue of the Federal Register.

Drafting Information

The principal author of these proposed regulations is David L. Meyer, Office of Assistant Chief Counsel, Income Tax and Accounting, Internal Revenue Service. However personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child Support, Continental shelf, Courts, Crime, Disclosure of information, Employment taxes, Estate taxes, Excise taxes, Filing requirements, Gift tax, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Proposed Amendments to the Regulations

For the reasons set forth in the preamble, 26 CFR part 301 is proposed to be amended as follows:

PART 301—[AMENDED]

Paragraph 1. The authority for part 301 continues to read in part:

Authority: Sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805 * * *.

Par. 2. Section 301.7216-2, paragraph (o), is amended by revising the third sentence to read as follows:

§ 301.7216-2 Disclosure or use without formal consent of taxpayer.

* * * * *

(o) * * * A quality or peer review is a review that is undertaken to evaluate, monitor, and improve the quality and accuracy of a tax return preparer's tax preparation, accounting and auditing services. * * *

* * * * *

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91-30713 Filed 12-26-91; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 169a

[DoD Instruction 4100.33]

Commercial Activities Program Procedures

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of Defense is proposing to revise this part to incorporate substantive changes to part 169a required by OMB revisions and DoD guidance. This part establishes procedures and criteria for use by the Department of Defense to determine whether DoD commercial activities should be performed by DoD personnel in-house or by contract with commercial sources.

DATES: Written comments on this proposed rule must be received on or before February 24, 1992.

ADDRESSES: Forward comments to the Office of the Assistant Secretary of Defense (Production and Logistics), Installations, Housing and Services, The Pentagon, room 3E787, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Mr. Earl DeHart, telephone 703–756–5641.

SUPPLEMENTARY INFORMATION: Part 169a was published in the Federal Register on October 7, 1985 (50 FR 40804) establishing the procedures for DoD commercial activities. Comments will be available for public inspection by request. Because of the anticipated number of comments, the Department of Defense does not plan to acknowledge or respond to individual comments. However, the Department of Defense will respond to comments in the preamble of the final rule.

List of Subjects in 32 CFR Part 169a

Armed forces; Government procurement.

Accordingly, it is proposed that 32 CFR part 169a be amended as follows:

PART 169a [AMENDED]

1. The authority citation for part 169a is proposed to be revised to read as follows:

Authority: 5 U.S.C. 301 and 552.

2. Footnote 1 is proposed to be revised to read as follows: "Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161."

3. Section 169a.2 is proposed to be amended by revising paragraphs (d)(5) through (7) and adding new paragraphs (d)(8) through (11) to read as follows:

§ 169a.2 Applicability and scope.

* * * * *

(d) * * *

(5) Does not apply when contrary to law, executive orders, or any treaty or international agreement.

(6) Does not apply in times of a declared war or military mobilization.

(7) Does not provide authority to enter into contracts.

(8) Does not apply to conduct of research and development, except for severable in-house CAs that support research and development, such as those listed in appendix A to this part.

(9) Does not justify conversion to contract solely to avoid personnel ceilings or salary limitations.

(10) Does not authorize contracts that establish an employer-employee relationship between the Department of Defense and contractor employees as described in FAR 37.104.

(11) Does not establish and shall not construed to create any substantive or procedural basis for anyone to challenge any DoD action or inaction on the basis that such action or inaction was not in accordance with this part, except as specifically set forth in § 169a.6[c](7).

3a. In Appendix A, footnotes 13 and 14 are redesignated as footnotes 1 and 2.

3b. Footnotes 5–12 are proposed to be redesignated as footnotes 6–13.

4. Section 169.4 is proposed to be revised to read as follows:

§ 169a.4 Policy.

(a) *Ensure DoD Mission Accomplishment.* The implementation of this part shall consider the overall DoD mission and the defense objective of maintaining readiness and sustainability to ensure a capability for mobilizing the defense and support structure.

(b) *Retain Governmental functions In-House.* Certain functions that are inherently governmental in nature, and intimately related to the public interest, mandate performance by DoD personnel only. These functions are not in competition with commercial sources; therefore, these functions shall be performed by DoD personnel.

(c) *Rely on the Commercial Sector.* DoD Components shall rely on commercially available sources to provide commercial products and services, except when required for national defense, when no satisfactory commercial source is available, or when in the best interest of direct patient care. DoD Components shall not consider an in-house new requirement, an expansion of an in-house requirement, conversion to in-house, or otherwise carry on any CAs to provide commercial products or services if the products or services can be procured more economically from commercial sources.

(d) *Achieve Economy and Enhance Productivity.* Encourage competition with the objective of enhancing quality, economy, and performance. When performance by a commercial source is permissible, a comparison of the cost of contracting and the cost of in-house performance shall be performed to determine who shall provide the best value for the Government, considering price and other factors included in the solicitation. If the installation commander has reason to believe that it may not be cost effective to make an award under mandatory source programs, section 8(a) of the Small Business Act or any other noncompetitive preferential procurement program, a cost comparison, or any other cost analysis, although not required by OMB Circular A–76, may be performed. Performance history will be considered in the source selection process, and high quality performance should be rewarded.

(e) *Delegate Decision Authority and Responsibility.* DoD Components shall delegate decision authority and responsibility to lower organization levels, giving more authority to the doers, and linking responsibility with that authority. This shall facilitate the work that installation commanders must perform without limiting their freedom to do their jobs. When possible, the installation commanders should have the freedom to make intelligent use of their resources, while preserving the essential wartime capabilities of U.S. support organizations in accordance with DoD Directive 4001.1 [5].

(f) *Share Resources Saved.* When possible, make available to the installation commander a share of any resources saved or earned so that the commander can improve operations or working and living conditions on the installation.

(g) *Provide Placement Assistance.* Provide a variety of placement assistance to employees whose Federal jobs are eliminated through CA competitions.

§ 169a.8 [AMENDED]

4. Section 169a.8 is proposed to be amended by revising "ASD(A&L)" to read "ASD(P&L)".

§ 169a.9 [Amended]

5. Section 169a.9 is proposed to be amended in paragraph (a) introductory text by removing the sentence: "ASD(A&L) shall be notified within 30 days of any such decision."; paragraph (a)(1)(ii) and (iv) by changing "ASD(A&L)" to "ASD(P&L)" each time it appears; and paragraph (a)(2)(i)(A) by changing "DoD FAR Supplement (DFAR)" to Defense FAR Supplement (DFARS)".

6. Section 169a.13 is proposed to be amended by revising the heading and

paragraphs (a) and (b) to read as follows:

§ 169a.13 CAs involving forty-five or fewer DoD civilian employees.

(a) When adequately justified under the criteria required in Appendix C to this part, CAs involving forty-five or fewer DoD civilian employees may be converted to contract based on simplified cost comparison procedures. Such conversions shall be approved by the DoD Component's central point of contact office having the responsibility for implementation of this part. Part IV of the supplement to OMB Circular A–76 shall be utilized to define the specific elements of cost to be estimated in the simplified cost comparison.

(b) In no case shall any CA involving more than forty-five employees be modified, reorganized, divided, or in any way changed for the purpose of circumventing the requirement to perform a full cost comparison.

* * * * *

§ 169a.15 [Amended]

7. Section 169a.15 is proposed to be amended as follows:

a. Paragraphs (a) and (b) are proposed to be amended by revising "ASD(A&L)" to read "ASD(P&L)".

b. Paragraph (d)(1)(i) is proposed to be amended by revising the first sentence and changing "ASD(A&L)" to "ASD(P&L)".

c. Paragraph (d)(1)(ii) is proposed to be revised.

d. A new paragraph (d)(1)(iii) is proposed to be revised.

e. Paragraphs (d)(2)(ii)(A) and (iii) are proposed to be revised.

f. Paragraph (d)(2)(v) is proposed to be amended by revising "components" to read "DoD components" and "agencies" to "Federal agencies.".

g. Paragraphs (d)(2)(vi) and (vii) are proposed to be amended by removing the word "Regulation" from "DoD Regulation 5220.22–R".

h. Paragraph (d)(4)(i)(C) is proposed to be amended by revising "ASD(A&L)" to read "ASD(P&L)".

i. Paragraph (d)(4)(i)(E) is proposed to be amended by revising "24.5" to read "19.1" and "13.4" to "13.6".

j. Paragraph (d)(4)(i)(H) is proposed to be amended, third sentence, after the word "rates" add "that include PCS costs multiplied by the appropriate support factor."

k. Paragraph (d)(4)(i)(I) is proposed to be added.

l. Paragraphs (d)(4)(ii)(D)(*2*) and (*3*) are proposed to be amended by removing the last sentence; and introductory text of paragraph (d)(4)(ii)(E) is proposed to be amended by revising "Property Disposal Office" to read "Defense Reutilization and Marketing Office".

§ 169a.15 Special considerations.

* * * * *

(d) * * *

(1) * * *

(i) *Congressional Notification.* DoD components shall notify Congress of the intention to do a full cost comparison.

* * *

(ii) DoD components shall, in accordance with Public Law 100–456, at least monthly during the development and preparation of the performance work statement (PWS) and management study, consult with DoD civilian employees who will be affected by the cost comparison and consider the views of such employees on the development and preparation of the PWS and management study. DoD components may consult with such employees more frequently and on other matters relating to the cost comparison. In the case of DoD employees represented by a labor organization accorded exclusive recognition under 5 U.S.C. 7111, consultation with representatives of labor organization satisfies the consultation requirement. Consultation with nonunion DoD civilian employees may be through such means as group meetings. Alternatively, DoD civilian employees may be invited to designate one or more representatives to speak for them. Other methods may be implemented if adequate notice is provided to the nonunion DoD civilian employees and the right to be represented during the consultations is ensured.

(iii) *Local Notification.* It is suggested that upon starting the cost comparison process, the installation make an announcement of the cost comparison, including a brief explanation of the cost-comparison process to the employees of the activity and the community. The installations' labor relations specialist also should be apprised to ensure appropriate notification to employees and their representatives in accordance with applicable collective bargaining agreements. Local Inter-Service Support Coordinators (ISCs) and the Chair of the appropriate Joint Inter-Service Resources Study Group (JIRSG) also should be notified of a pending cost comparison.

(2) * * *

(ii) * * *

(A) Prepare PWS that are based on accurate and timely historical or projected work land data and that provide measurable and verifiable performance standards.

* * * * *

(iii) Guidance on Government property:

(A) For the purposes of this part, Government property is defined in accordance with the FAR, 48 CFR part 45.

(B) The decision to offer or not to offer Government property to a contractor shall be determined by a cost-benefit analysis justifying that the decision is in the best interest of the Government. The determination on Government property must be supported by current, accurate, complete information and be readily available for the independent reviewing activity. The design of this analysis shall not give a decided advantage/disadvantage to either in-house or contract competitors. The management of Government property offered to the contractor shall also be in compliance with FAR, 48 CFR chapter 1.

(4) * * *

(i) * * *

(I) In order to more accurately estimate personnel costs, line 1 (Personnel Costs) shall be completed as follows:

[(Basic Pay × fringe benefit factor**) + (other Pay × Medicare factor)]

**The fringe benefit factor includes cost factors for standard retirement, employee insurance benefits (life and health), Medicare, and miscellaneous fringe benefits.

* * * * *

8. Section 169a.17 is proposed to be amended by revising paragraph (a); paragraph (d)(1) changing "DFAR" to "DFARS"; by revising paragraph (f); paragraph (g)(1) by removing the last sentence; and by adding new paragraph (1) to read as follows:

§ 169a.17 Solicitation considerations.

(a) Every effort must be made to avoid postponement or cancellation of OMB circular A–76 solicitations and when there is no alternative, contracting officers must clearly document the reason(s).

* * * * *

(f) OMB circular A–76 contract, should be terminated at the appropriate time when the Department of Defense has the authority to close or realign installations.

* * * * *

(l) In order to ensure that bonds and/or insurance requirements are being used in the best interest of the Government, as a general rule, requirements (for other than construction related services) above the levels established in the fAR and DFARS should not be included in acquisitions.

9. Section 169a.18 is proposed to be amended by revising (b)(3) to read as follows:

§ 169a.18 Administrative appeal procedures.

* * * * *

(b) * * *

(3) Each DoD Component shall establish an administrative appeal procedure that is independent and objective; Installation Commanders must make available, upon request, the documentation supporting the decision to directly convert activities; appeals to direct conversions must be filed within 30 calendar days after the decision is announced in the Commerce Business Daily and/or **Federal Register**, and the supporting documentation is made available; an impartial official one level organizationally higher than the official who approved the direct conversion decision will hear the appeal; officials will provide an appeal decision within 30 calendar days of receipt of the appeal.

* * * * *

§ 169a.21 [Amended]

10. Section 169a.21 is proposed to be amended in paragraph (c)(2) by changing "ten" to "forty-five"; paragraph (c)(3), first sentence, add "(while in session)" after the word "Components" and in the second sentence by revising "ASD(A&L)" to read "ASD(P&L)"; paragraph (c)(5) changing "ASD(A&L)" to "Congress (while in session)"; paragraph (c)(6) by changing "50" to "75"; and paragraph (c)(7) changing "ASD(A&L)" to "ASD(P&L)" and by adding the sentence "Also, include the number of studies you expect to complete in the next fiscal year showing total civilian and military FTEs." at the end of the paragraph.

§ 169a.22 [Amended]

11. Section 169a.22 is proposed to be amended in paragraph (b)(1) by changing "OASD(A&L)IA" to "OASD(P&L)" and changing "OASD(A&L)" to "OASD(P&L"; paragraph (b)(2) changing "OASD(A&L)" to "OASD(P&L)".

Appendix A [Amended]

11a. Appendix A is proposed to be amended by redesignating "footnotes 13–14" as "1–2."

12. Appendix B. is proposed to be revised to read as follows:

Appendix B to part 169a—Commercial Activities Inventory Report and Five-Year Review Schedule

A. *General Instructions*

1. Send your inventory reports before 1 January to the Defense Manpower Data Center (DMDC). Use Report Control Symbol "DD–P&L(A) 1540" and send by microcomputer diskette, magnetic tape, or use terminals as a medium.

2. You can use nine-track extended binary coded decimal interchange code (EBCDIC), 1600 or 6250 density, even parity for tape medium. Data records must have 132 characters and block ten logical records to a block. Do not use headers and trailers. Use a tape mark (end of file) to follow the data. Use an external label, on the reel, showing your organization for return. Also, do this for the title of the report, the fiscal year (FY) covered, and the tape attributes.

3. Prior permission for interface requirements must be established between DMDC and the sender when sending by a remote work station terminal.

4. DATA FORMAT:

[In-house DoD commercial activities]

Data element	Tape positions	Field	Data[1]
Designator	1	A	A
Installation		A1	
State, Territory, or Possession	2–3	A1a	N
Place	4–9	A1b	A/N
*Function	10–14	A2	A/N
In-house civilian workload	15–20	A3	N
Military workload	21–26	A4	N
*Reason for in-house operation	49	A8	A
*Most recent year in-house operation approved	50–51	A9	N
*Year DoD CA scheduled for next review	52–53	A10	N
Installation name	76–132	A11	A

[1] A=Alpha; N=Numeric. And A/N data shall be left justified and space filled. N data shall be right justified and zero filled.

* Items marked with an asterisk (*) have been registered in the DoD Data Element Dictionary.

5. When definite coding instructions are not provided, reference must be made to DoD 5000.12–M[2]. Failure to follow the coding instructions contained in this document, or those published in Pub. L. 89–306 makes the DoD component responsible for noncompliance of required consessions in data base communication.

B. ENTRY INSTRUCTIONS

Field	Instruction
A	Enter an A to designate that the data to follow on this record pertains to a particular DoD CA.
A1a	Enter the two-position numeric code for State (Data element reference ST–GA) or State equivalent (federal Information Processing Standards Publication 55–2, as shown in attachment 1 to this appendix.

[2] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

B. ENTRY INSTRUCTIONS—Continued

Field	Instruction
A1b	Enter the unique alpha-numeric code established by the DoD Component for military installation, named populated place, or related entity where the CA workload was performed during the FY covered by this report. A separate look-up listing or file should be provide showing each unique place code and its corresponding place name or enter the name in field "A11".
A2	Enter the function code from appendix A to this part that best describes that type of CA workload basically performed by the CA covered by this report. Left justify.
A3	Enter total (full- and part-time) in-house civilian workyear equivalents applied to the performance of the function during the FY. Round off to the nearest whole workyear equivalent. (If amount is equal to or greater than .5, round up. If amount is less than .5, round down. Amounts between zero and one should be entered as one). Right justify. Zero fill.
A4	Enter total military workyear equivalents applied to the performance of the function in the FY. Round off to the nearest whole workyear equivalent. (Amounts between zero and one should be entered as one). Right justify. Zero fill.
A8	Enter the reason for in-house operation of the CA, as shown in attachments 1 and 2 of this Appendix.
A9	Enter the last two digits of the most recent FY corresponding to the reason for in-house operation of the CA, as stated in field A8.
A10	Enter the last two digits of the FY the function is scheduled for study or next review. (Data element reference YE–NA.)
A11	Enter the named populated place, or related entity, where the CA workload was performed.

Attachment 1 to Appendix B to Part 169a—Codes for Denoting States, Territories, and Possessions of the United States

a. *Numeric States Codes* [Data element reference ST–CA]

Code	
01	Alabama
02	Alaska
04	Arizona
05	Arkansas
06	California
08	Colorado
09	Connecticut
10	Delaware
11	District of Columbia
12	Florida
13	Georgia
15	Hawaii
16	Idaho
17	Illinois
18	Indiana
19	Iowa
20	Kansas
21	Kentucky
22	Louisiana
23	Maine
24	Maryland
25	Massachuesetts
26	Michigan

27 Minnesota
28 Mississippi
29 Missouri
30 Montana
31 Nebraska
32 Nevada
33 New Hampshire
34 New Jersey
35 New Mexico
36 New York
37 North Carolina
38 North Dakota
39 Ohio
40 Oklahoma
41 Oregon
42 Pennsylvania
44 Rhode Island
45 South Carolina
46 South Dakota
47 Tennessee
48 Texas
49 Utah
50 Vermont
51 Virginia
53 Washington
54 West Virginia
55 Wisconsin
56 Wyoming

b. *State Equivalent Codes* (FIPS 55–2)

Code

60 American Samoa
66 Guam
69 Northern Marianna Islands
71 Midway Islands
72 Puerto Rico
75 Trust Territory of the Pacific Islands
76 Navassa Island
78 Virgin Islands
79 Wake Island
81 Baker Island
84 Howland Island
86 Jarvis Island
89 Kingsman Reff
95 Palmyra Atoll

Attachment 2 to Appendix B to Part 169a—Reasons for In-House Operations

1. *In-House Authorized Reason Codes* (for entry in field A8)

Code	Explanation
A	Indicates that the DOD CA has been retained in-house for national defense reasons in accordance with section 169a.5(b)(1)(i) of this part, other than CAs reported under code "C", below.
C	Indicates that the DoD CA is retained in-house because the CA is essential for training or experience in required military skills, or the CA is needed to provide appropriate work assignments for a rotation base for overseas or sea-to-shore assignments, or the CA is necessary to provide career progression to a needed military skill level in accordance with section 169a.5(b)(1)(i) of this part.
D	Indicates procurement of a product or service from a commercial source would cause an unacceptable delay or disruption of an essential DoD program.
E	Indicates that there is no satisfactory commercial source capable of providing the product or service needed.
F	Indicates that a cost comparison has been conducted and that the Government is providing the product or service at a lower total cost as a result of cost comparison.
G	Indicates that the CA is being performed by DoD personnel now, but decision to continue in-house or convert to contract is pending results of a scheduled cost comparison.
H	Indicates that the CA is being performed by DoD employees now but will be converted to contract because of cost comparison results.
J	Indicates that the CA is performed at a DoD hospital and, in the best interest of direct patient care, is being retained in-house.
N	Indicates that the CA is performed by DoD employees now, but a review is in progress pending a decision. (i.e., base closure, realignment or consolidation).
X	Indicates that the installation Commander is not scheduling this CA for cost study under the provisions of Congressional authority.
Y	Indicates the CA is retained in-house because the cost study exceeded the time limit prescribed by law.
Z	Indicates that a CA is retained in-house for reasons not included above. (i.e., a law, Executive Order, treaty, or international agreement).

2. *Use of Other Codes:* Other codes may be assigned as designated by the ODASD(I).

13. Appendix C is proposed to be revised to read as follows:

Appendix C to Part 169a—Simplified Cost Comparison and Direct Conversion of CAs

A. This appendix provides guidance on procedures to be followed in order to convert a commercial activity employing 45 or fewer DoD civilian employees to contract performance without a full cost comparision. DoD Components may directly convert functions with 10 or fewer civilian employees without conducting a simplified cost comparison. Simplified cost comparisons are to be conducted on activities with 11–45 civilian employees to ensure that cost data are fully considered in decisions on CAs.

B. The proposed direct conversions must meet the following criteria:

1. The activity is currently performed by 10 or fewer civilian employees.

2. The conversion makes sense from a management or performance standpoint.

3. The conversion is cost effective.

4. The installation commander must certify that all affected civilian employees will be offered jobs at that installation, or within the local area, commensurate with their current skills and pay grades. If no such vacancies exist the employees will be offered retraining opportunities for existing or projected vacancies at that installation or within the local area. The employees potential right-of-first-refusal with civilian contractors does not satisfy this requirement.

Attachment 1 of this Appendix is a format for preparing direct conversion requests. Each potential candidate for direct conversion should be reviewed on a case-by-case basis to ensure that both the in-house and contractor cost estimates are as accurate as possible.

C. The following provides general guidance for completion of a simplified cost comparison:

1. Estimated contractor costs should be based on either the past history of similar contracts at other installations or on the contracting officer's best estimate of what would constitute a fair and reasonable price.

2. For activities small in total size (45 or fewer civilian and military personnel):

a. Estimated in-house cost generally should not include overhead costs, as it is unlikely that they would be a factor for a small activity.

b. Similarly, estimated contractor costs generally should not include contract administration, one-time conversion costs, or other contract price add-ons associated with full cost comparisons.

3. For activities large in total size (45 or fewer civilian employees but a significant number of military personnel) all cost elements should be considered for both in-house and contractor estimated costs.

4. In either case, large or small, the 10 percent conversion differential contained in part IV of the supplement to OMB Circular A–76 should be applied.

5. Part IV of the supplement to OMB Circular A–76 shall be utilized to define the specific elements of cost to be estimated and for developing the MEO in the simplified cost comparison.

6. Clearance for CA simplified cost comparison decisions are required for Agencies without their own LA and PA offices. Those Agencies shall submit their draft decision brief to the Deputy Assistant Secretary of Defense, (Installations) room 3E787, the Pentagon, DC 20301 for release to Congress.

7. Provide CA simplified cost comparison approvals containing a certification of the MEO analysis, a copy of the approval to convert, a copy of the cost comparison fact sheet (attachment 1 to this appendix), with back-up data, before conversion to the following:

a. Committee on Appropriations of the House of Representatives and the Senate (11–45 civilian employees only)

b. Copies to the following:

(1) Assistant Secretary of Defense (Legislative Affairs), room 3D918, the Pentagon, Washington, DC 20301.

(2) Assistant Secretary of Defense (Public Affairs), room 2E757, the Pentagon, Washington, DC 20301.

(3) Office of Economic Adjustment, room 4C767, the Pentagon, Washington, DC 20301.

(4) Deputy Assistant Secretary of Defense, (Installations), room 3E787, the Pentagon, Washington, DC 20301. (exception—no copies required from Agencies that do not have legislative and public affairs offices)

8. Certification for all activities involving 11 to 45 DoD civilian employees. The installation commander must certify that the estimated in-house cost for each simplified cost comparison is based on a completed most efficient and cost effective organization analysis. Certification of this MEO analysis, as required by Public Law 101–165 shall be provided to the Committee on Appropriations of the House of Representatives and the Senate before conversion to contract performance.

Attachment 1 to Appendix C to Part 169a–Fact Sheet for Direct Conversions

Title: Direct Conversion for

_____

(Activity/Function)
at

_____

(Installation)
Description of activity:

_____

Number of affected personnel:
CIV _____
(Authorizations)
MIL _____
(Authorizations)
Status of affected civilian employees:

_____

(Special considerations such as a number of employees classified as "Section 3310," preference eligible veterans, minorities, handicapped. Also, include number of civilian authorizations currently vacant or filled by temporaries.)
Placement plans for affected civilian employees:

_____

Justification for direct conversion:

_____

(Narrative justification other than cost.)

Direct Conversion (details attached):
Estimated In-House Cost:
—Personnel Cost (including fringe benefits). _____
—Material and Supply Cost ..... _____
—Other In-House Cost (if appropriate). _____
—Total Estimated in-House Cost. _____
Estimated Contractor Cost:
—Estimated Contract Price..... _____
—Contract Administration (if appropriate). _____
—Other Estimated Contractor Cost (if appropriate). _____
—Total Estimated Contractor Cost. _____
—Conversion Differential (10% of In-House Personnel Cost). _____
Adjusted Contractor Cost ..... _____

Point of Contract:

_____

14. Appendix D is proposed to be revised to read as follows:

Appendix D to Part 169a—Commercial Activities Management Information System (CAMIS)

A. Each DoD Component shall create and manage their A–76 data base. The A–76 data base shall have a comprehensive edit check on all input data in the computerized system. All data errors in the A–76 data base shall be corrected as they are found by the established edit check program. The data elements described in this Appendix represents the DoD minimum requirements.

B. On approval of a full cost comparison, a simplified cost comparison, or a direct conversion CA, the DoD Component shall create the initial entry using the format at attachment 1 of this Appendix for full cost comparisons or attachment 2 of this Appendix for all other conversions. Within 30 days of the end of each quarter the DoD Component shall submit automated tape or diskette, annotated with the number of records submitted and the record length. The data shall be in the format that has been agreed to by the DMDC at least 60 days prior to the end of the quarter. All data shall be in upper case. (TAPE MEDIUM—Use 9 track tape Extended Binary Coded Decimal Interchange Code (EBCDIC) 1600 or 6250 density, even parity). The DMDC shall use the automated data to update the CAMIS. If the DoD Component is unable to provide data in an automated format, the DMDC shall provide quarterly printouts of cost comparison records (CCR) and conversion/comparison records (DCSCCR) that may be annotated and returned within 30 days of the end of each quarter to the DMDC. The DMDC then shall use the annotated printouts to update the CAMIS.

Part I—Cost Comparison

The record for each full cost comparison is divided into six sections. Each of those sections contains information provided by the DoD Components. The first five sections are arranged in a sequence of milestone events occurring during a cost comparison. Each section is completed immediately following the completion of the milestone event. These are as follows:

1. Cost comparison is approved by DoD Component.
2. Solicitation is issued.
3. In-house and contractor costs are compared.
4. Contract is awarded or solicitation is canceled.
5. Contract starts.

The events in paragraphs B.1. through 5 of part I of this appendix are used as milestones because on their completion some elements of significant information on the cost comparison become known.

A sixth section is utilized for tracking historical data after the cost comparison is completed. This section contains data elements on contracts and cost information during the second and third performance period.

The data elements that comprise the six sections in part I, of this appendix, are defined in the CAMIS Entry and Update Instructions, part I of part II of this appendix.

Part II—Direct Conversions and Simplified Cost Comparisons

The record for each direct conversion and simplified cost comparison is divided into six sections. Each of the first five sections is completed immediately following the completion of the following events:

1. DoD component approves CA action.
2. The solicitation is issued.
3. In-house and contractor costs are compared.
4. Contract is awarded or solicitation is canceled.
5. Contract starts.

A sixth section is utilized for tracking historical data after the direct conversion or simplified cost comparison is completed. This section contains data elements on contracts and cost information during the second and third performance period.

The data elements that comprise the six sections in part II, of this appendix, are defined in the CAMIS Entry and Update Instruction, Part II—Direct Conversions and Simplified Cost Comparisons.

Camis Entry and Update Instructions

Part I—Cost Comparisons

The bracketed number preceding each definition in Section One through Six, below, is the DoD data element number. All date fields should be in the format YYMMDD (Data element reference DA–FA).

Section One

Event: DoD Component Approves Conducting a Cost Comparison

All entries in this section of the CCR shall be submitted by DoD Components on approving the start of a cost comparison. These entries shall be used to establish the CCR and to identify the geographical, organizational, political, and functional attributes of the activity (or activities) undergoing cost comparison as well as to provide an initial estimate of the manpower associated with the activity (or activities). The initial estimate of the manpower in this section of the CCR will be, in all cases, those manpower figures identified in the correspondence approving the start of the cost comparison. DoD Components shall enter the following data elements to establish a CCR:

(1) Cost Comparison Number. The number assigned by the DoD Component to uniquely identify a specific cost comparison. The first character of the cost comparison number must be a letter designating the DoD Component as noted in data element (3) of this appendix. The cost comparison number may vary in length from 5 to 10 characters, of which the second and subsequent may be alpha or numeric and assigned under any system desired by the DoD Component.

(2) Announcement and/or Approval Date. Date Congress is notified when required by section 502(a)(2)(A), appendix E, of this part or date DoD Component approves studies with less than 46 FTEs.

(3) DoD component code. Use the following codes to identify the Military Service or

Defense Agency/Field Activity conducting the cost comparison:

A—Department of the Army
B—Defense Mapping Agency (DMA)
D—Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) (3D1)
D—Washington Headquarters Service (WHS)(3D2)
F—Department of the Air Force
G—National Security Agency/Central Security Service (NSA/CSS)
H—Defense Nuclear Agency (DNA)
J—Joint Chiefs of Staff (including the Joint Staff, Unified and Specified Commands, and Joint Service Schools)
K—Defense Information Systems Agency (DISA)
L—Defense Intelligence Agency (DIA)
M—United States Marine Corps (USMC)
N—United States Navy (USN)
R—Defense Contract Audit Agency (DCAA)
S—Defense Logistics Agency (DLA)
T—Defense Security Assistance Agency (DSAA)
V—Defense Investigative Service (DIS)
W—Uniformed Services University of the Health Sciences (USUHS)
Y—U.S. Army Corps of Engineers (USACE) Civil Works
2—Defense Finance & Accounting Service (DFAS)
3—Defense Commissary Agency (DeCA)

(4) Command Code. The code established by the DoD Component Headquarters to identify the command responsible for operating the CA undergoing cost comparison. A separate look-up listing or file shall be provided to the DMDC showing each unique command code and its corresponding command name. If the DoD Component chooses to submit the look-up table on diskette or tape, the format should be as follows:

Column	Entry
1 through 6 (left justify)	command code.
7	blank.
8 through 10 (left justify)	command code.

(5) Installation Code. The alpha and/or numeric designation established by the DoD Component Headquarters to identify the installation where the CA(s) under cost comparison is and/or are located physically. Two or more codes (for cost comparison packages encompassing more than one installation) should be separated by commas. A separate look-up listing or file shall be provided to the DMDC showing each unique installation code and its corresponding installation name. Also submission of the installation name in each record is allowed. If the DoD Component chooses to submit the look-up listing on diskette or tape, the format shall be as follows:

Column	Entry
1 through 10 (left justify)	installation code.
11	blank.
12 through 80 (left justify)	installation code.

The DMDC shall generate the installation name corresponding to the installation code submitted by the DoD Component, and display it with the code on the CAMIS.

(6) State Code. A two-position numeric code for the State (Data element reference ST–GA.) or State Equivalent (FIPS 55–2), as shown in attachment 1 of appendix B of this part, where element (5) is located. Two or more codes shall be separated by commas.

(7) Congressional District (CD) Code. Number of the CDs where element (5) of this section, is located. If representatives are elected "at large," enter "01" in this data element; for a delegate or resident commissioner (i.e., District of Columbia or Puerto Rico) enter "9." If the installation is located in two or more CDs, all CDs should be entered and separated by commas.

(8) JIRSG Area Code. The JIRSG Area that element (5) of this section, is assigned to for coordination of the DRIS Program, DoD 4000.19–R. This is a four-character alpha and/or numeric data element. For instance, "NO15" is the National Capital Region (NCR) (as published in the "DRIS Point of Contact Directory").

Note: A DoD Component may, at its option, report corresponding multiple values for the following geographical data elements: State code, CD, and JIRSG area code. These values shall be grouped and punctuated, as shown in the example, below, so that the proper relationship can be established between each installation code value and its corresponding set of geographical attribute values.

(5) Installation code	(6) State code	(7) CD code	(8) JIRSG area code
AAAAA,BBBBB,CCCCC	13,06,34	05,06;42,15	S003,WE10,*

When multiple values within a data element are reported for a single installation code, semicolons shall be used to separate each series of values and to indicate correspondence of each series to its respective installation value; commas shall be used to separate the values within a series. When only a single value (within a data element) is reported for each installation, the values shall be separated by commas. To denote an unknown or missing number of a series of values, the asterisk (*) symbol should be used.

The cost comparison package, above, involves three installations: AAAAA, BBBBB, and CCCCC. The first is located in Georgia, the second in California, and the third in New Jersey. AAAAA is in Georgia's 5th and 6th CDs, BBBBB is in California's 42nd CD, and CCCCC is in New Jersey's 15th CD. The first two installations are in JIRSG areas S003, and WE10, respectively. CCCCC is not within a JIRSG area.

(9) Title of Cost Comparison. The title that describes the CA(s) under cost comparison (for instance, "Facilities Engineering Package," "Installation Bus Service," or "Motor Pool"). Use a clear title, not acronyms or function codes in this data element.

(10) DoD Functional Area Code(s). The four- or five- alpha and/or numeric character designators listed in appendix A of this part, that describes the type of CA undergoing cost comparison. There would be one code for a single CA or possibly several codes for a large cost comparison package. A series of codes shall be separated by commas.

(11) Prior Operation Code. A single alpha character that identifies the mode of operation for the activity at the time the cost comparison is started. Despite the outcome of the cost comparison, this code does not change. The coding is as follows:

C—Contract
E—Expansion
I—In-house
N—New requirement

(12) Cost Comparison Status Code. A single alpha character that identifies the current status of the cost comparison. Enter one of the following codes:

B—Broken out. The cost comparison package has been broken into two or more separate cost comparisons. The previous CCR shall be excluded from future updates. (See data element (15) of this section).
C—Complete
P—In progress
X—Canceled. The CCR shall be excluded from future updates.
Z—Consolidated. The cost comparison has been consolidated with one or more other cost comparisons into a single cost comparison package. The CCR for the cost comparison that has been consolidated shall be excluded from future updates. (See data element (15) of this section).

13—Announcement—Personnel Estimate Civilian, and (14) Announcement—Personnel Estimate Military. The number of civilian and military personnel allocated to the CAs undergoing cost comparison when the cost comparison is approved by the DoD Component or announced the Congress. This number in all cases shall be those personnel figures identified in the correspondence announcing the start of a cost comparison and will include authorized positions, temporaries, and borrowed labor. The number is used to give a preliminary estimate of the size of the activity.

15—Revised and/or Original Cost Comparison Number. When a consolidation occurs, create a new CCR containing the attributes of the consolidated cost comparison. In the CCR of each cost comparison being consolidated, enter the cost

comparison number of the new CCR in this data element and code "Z" in data element (12) of this section. In the new CCR, this data element should be blank and data element (12) of this section, should denote the current status of the cost comparison. Once the consolidation has occurred, only the new CCR requires future updates.

When a single cost comparison is being broken into multiple cost comparison, create a new CCR for each cost comparison broken out from the original cost comparison. Each new CCR shall contain its own unique set of attributes; in data element (15) of this section, enter the cost comparison number of the original cost comparison from which each was derived, and in data element (12) of this section, enter the current status of each cost comparison. For the original cost comparison, data element (15) of this section, should be blank and data element (12) of this section, should have a code "B" entry. Only the derivative record entries require future updates.

When a consolidation or a breakout occurs, an explanatory remark shall be entered in data element (57) of this section (such as, "part of SW region cost comparison," or, "separated into three cost comparisons").

(16) PWS Scheduled Completion Date. The date the approved PWS is anticipated to be provided to the contracting officer for solicitation preparation at the start of a cost comparison.

(16A) PWS Actual Completion Date. The date the approved PWS is provided to the contracting officer for solicitation preparation.

Section Two

Event: The Solicitation is Issued

The entries in this section of the CCR provide information on the personnel authorized to perform the workload in the PWS, the number of workyears used to accomplish the workload in the PWS, and the type and kind of solicitation.

The DoD Component shall enter the following data elements at the first quarterly update subsequent to the issuance of the solicitation:

(17) Scheduled Solicitation Issuance Date. The date of solicitation as anticipated at the start of a cost comparison.

(17A) Date Solicitation Issued. The date the solicitation is issued by the contracting officer.

(18) Solicitation-Type Code. A one-character alpha designator that identifies the type of solicitation to obtain contract bids or offers. Use either the CBD as the source document or information received from the contracting officer for this entry. Solicitations under section 8(a) of "The Small Business Act" are negotiated. Enter one of the following codes:

N—Negotiated
S—Sealed Bid

(19) Solicitation-Kind Code. A one-character (or two-character, if "W" suffix is used) alpha designator indicating whether the competition for the contract has been limited to a specific class of bidders or offerors. Use either the CBD as the source document or information received from the contracting officer to enter one of the following codes:

A—Restrict to small business
B—Small Business Administration 8(a) Set Aside
C—"Javits-Wagner-O'Day Act" (JWOD)
D—Other mandatory sources
U—Unrestricted
W—(Optional suffix) Unrestricted after initial restriction

(20) Current Authorized Civilians, and (21) Current Authorized Military. The number of civilian and military authorizations allocated on the DoD Component's manpower documents to perform the work described in the PWS. This number refines the initial authorization estimate (*Section One*, data elements (13) and (14), of this section).

(22) Baseline Annual Workyears Civilian, and (23) Baseline Annual Workyears Military. The number of annual workyears it has taken to perform the work described by the PWS before the DoD Component conducts the MEO study of the in-house organization. Do not include contract monitor requirements. Military workyears include assigned, borrowed, diverted, and detailed personnel.

An annual workyear is the use of 2,087 hours (including authorized leave and paid time off for training). For example, when full-time employees, whose work is completely within the PWS are concerned, "one workyear" normally is comparable to "one employee" or two part-time employees, each working 1,043 hours in a FY. Also include in this total, the workyears for employees who do not work full-time on the work described by the PWS. For example, some portion of the workload is performed by persons from another work center who are used on an as needed basis. Their total hours performing that workload is 4,172 hours. This would be reflected as 2 workyears. Less than one-half a year of effort should be rounded down, and one-half a year or more should be rounded up.

Those workyear figures shall be the baseline for determining the personnel savings identified by the management study.

Section Three

Event: The In-House and the Contractor Costs of Operation are Compared

The entries in this section provide information on the date of the cost comparison (initial decision), the preliminary results, the number of bids or offers received, and the costing method used in the cost comparison.

The DoD Component shall enter the following data elements in the first quarterly update subsequent to the date of the comparison of in-house and contractor costs (date of initial decision):

(24) Scheduled Initial Decision Date. Date the initial decision is scheduled at the start of a cost comparison.

(24A) Actual Initial Decision Date. Date the initial decision is announced. The initial decision is based on the apparent low bid or offer and is subject to preaward surveys and resolution of all appeals and protests. In a sealed bid procurement, the initial decision is announced at bid opening. In a negotiated procurement, the initial decision is announced when the cost comparison is made between the in-house estimate and the proposal of the selected offeror.

(25) Cost Comparison Preliminary Results Code. A one-character alpha designator indicating the results of the cost comparison as announced by the contracting officer at the time the bids or offers are compared. The entities are limited to two possibilities:

C—Contract
I—In-house

(26) Cost Method Code. A one-character numeric designator indicating the procedures under which the cost comparison was and/or is being conducted. Enter one of the following codes:

1—Cost comparison conducted under the incremental costing procedures in effect before 1980.
2—Cost comparison conducted using the full costing procedures in DoD 4100.33–H, April 1980. (superseded September 9, 1985 by DoD Instruction 4100.33).
3—Cost comparison conducted under the alternative costing procedures implemented in the Department of Defense in March 1982.
4—Cost comparison conducted under the new costing procedures in the OMB Circular A–76 published August 4, 1983, and implemented by the Department of Defense in March 1984.

(27) Number of Bids or offers Received. The number of commercial bids or offers received by the contracting officer in response to the solicitation.

Section Four

Event: The Contracting Officer Either Awards the Contract or Cancels the Solicitation

The entries in this section identify the final result, information on the contract, the in-house bid, and costing information from the cost comparison record. The DoD Component shall enter the following data elements in the quarterly update subsequent to the date the contacting officer either awards a contract or cancels the solicitation:

(28) Contract Award or Solicitation Cancellation Date. For conversions to contract, this is the date a contract was awarded in a sealed bid solicitation or the date the contractor was authorized to proceed on a conditional award contract in a negotiated solicitation. For retentions in-house, this is the date the solicitation was canceled (when the contracting officer publishes an amendment to cancel the solicitation).

(29) Cost Comparison Final Result Code. A one-character alpha designator identifying the final result of the comparison between in-house and contractor costs; the contracting officer either awards the contract or cancels the solicitation. Enter one of the following codes:

C—Contact
I—In-house

(30) Decision Rationale Code. A one-character alpha designator that identifies the rationale for awarding a contract or canceling the solicitation. The work shall be performed in-house or by contractor based on cost, for other than cost, or the work shall be performed in-house because no satisfactory commercial source was available (no bids or offers were received or the pre-award survey

resulted in the determination that no commercial sources were responsive or responsible. Enter one of the following codes:

C—Cost
N—No satisfactory commercial source
O—Other

(31) Contract-Type Code. Enter one of the following alpha designators for the type of contract used in the cost comparison. This entry is required for all completed studies regardless of their outcome.

CPAF—Cost Plus Award Fee
CPFF—Cost Plus Fixed Fee
CPIF—Cost Plus Incentive Fee
FFP—Firm Fixed Price
FP-EPA—Fixed Price with Economic Price Adjustment
FPI—Fixed Price Incentive
TM-LH—Time and Material or Labor Hour

(31A) Prime Contractor Size. Enter one of the following:

L—Large business
S—small or small and/or disadvantaged business

(32) MEO Workyears. The number of annual workyears it takes to perform the work described in the PWS after the MEO study has been conducted. This entry will be equal to the number of annual workyears in the in-house bid. For data elements (33) through (36) of this section, enter all data after all adjustments required by appeal board decisions. Do not include the minimum cost differential (line 14 in the CCF or line 16 in the ENRC CCF) in the computation of any of these data elements. If a valid cost comparison was not conducted (i.e., all bidders or offerors disqualified, no bids or offers received, etc.) do not complete data elements (33), (34), and (36) of this section. Explain lack of valid cost data in data element (57) of this section, "DoD Component Comments"

(33) First Performance Period. Expressed in months, the length of time covered by the contract. Do not include any option periods.

(34) Cost Comparison Period. Expressed in months, the total period of operation covered by the cost comparison; this is the period used as the basis for data elements (35) and (36) of this section.

(35) Total In-House Cost ($000). Enter the total cost of in-house performance in thousands of dollars, rounded to the nearest thousand. This is the total of line 9 plus line 22 of the old CCF (line 6 of the new CCF or line 8 of the new ENRC CCF). An entry is required although the activity remains in-house due to absence of a satisfactory commercial source.

(36) Total Contract Cost ($000). Enter the total cost of contract performance in thousands of dollars, rounded to the nearest thousand. This is the total of line 13 of the CCF or line 15 of the ENRC CCF).

(37) Notification Date. The date Congress was notified that the DoD Component intends to convert a CA with 46 or more FTEs to contract performance or the MEO certification date for CAs with 11 to 45 FTEs.

(37A) Scheduled Contract or MEO Start Date. Date of the contract and/or MEO was scheduled to start at the beginning of a cost comparison.

Section Five

Event: The Contract Starts

The entries in this section identify the contract start date and the personnel actions taken as a result of the cost comparison.

The DoD Component shall enter the following date elements in the first quarterly update subsequent to the start of the contract:

(38) Contract/MEO Start Date. The actual date the contractor began operation of the contract or the Government implements the MEO.

(39) Permanent Employees Reassigned to Equivalent Positions. The number of permanent employees who were reassigned to positions of equivalent grade as of the contract start date.

(40) Permanent Employees Changed to Lower Positions. The number of permanent employees who were reassigned to lower grade positions as of the contract start date.

(41) Employees Taking Early Retirement. The number of employees who took early retirement as of the contract start date.

(42) Employees Taking Normal Retirement. The number of employees who took normal retirement as of the contract start date.

(43) Permanent Employees Separated. The number of permanent employees who were separated from Federal employment as of the contract start date.

(44) Temporary Employees Separated. The number of temporary employees who were separated from Federal employment as of the contract start date.

(45) Employees Entitled to Severance Pay. The estimated number of employees entitled to severance pay on their separation from Federal employment as of the contract start date.

(46) Total Amount of Severance Entitlements ($000). The total estimated amount of severance to be paid to all employees, in thousands of dollars, rounded to the nearest thousand, as of the contract start date.

(47) Number of Employees Hired by the Contractor. The number of estimated DoD civilian employees (full-time or otherwise) that will be hired by the contractors, or their subcontractors, at the contract start date.

Administrative Appeal

(48) Filed. Were administrative appeals filed?

N—No
Y—Yes

(49) Source. Who filed the appeal?

B—Both
C—Contractor
I—In-house

(50) Result. Were the appeals finally upheld? (if both appealed, explain result in data element (57) of this section).

N—No
P—Still in progress
Y—Yes

GAO Protest

(51) Filed. Was a protest filed with GAO?

N—No
Y—Yes

(52) Source. Who filed the protest?

B—Both
C—Contractor
I—In-house

(53) Result. Was the protest finally upheld? (explain result in data element (57) of this section).

N—No
P—Still in progress
Y—Yes

Arbitration

(54) Requested. Was there a request for arbitration?

N—No
Y—Yes

(55) Result. Was the case found arbitratible? (explain result in data element (57) of this section).

N—No
P—Still in progress
Y—Yes

General Information

* (56) Total Staff-Hours Expended. Enter the estimated number of staff-hours expended by the installation for the cost comparison. Include direct and indirect hours expended from the time of PWS until a final decision is made.

* (56A) Estimated Cost of Conducting the Cost Comparison. Enter the estimated cost of the total staff-hours identified in data element (56) of this section and non-labor (travel, reproduction costs, etc.) associated with the cost comparison.

(57) DoD Component Comments. Enter comments, as required, to explain situations that affect the conduct of the cost comparison. Where appropriate, precede each comment with the CAMIS data element being referenced.

(58) Effective Date. "As of" date of the most current update for the cost comparison. This data element will be completed by the DMDC.

(59) (Leave blank, for DoD computer program use).

Section Six

Event: Quarter Following Contract and/or Option Renewal

The entries in this section identify original costs, savings, information on subsequent performance periods and miscellaneous contract data. The DoD Component shall enter the following data elements in the first quarterly update annually.

(60) Original Cost of Function(s) ($000). The estimated total cost of functions prior to development of an MEO in thousands of dollars, rounded to the nearest thousand for the base year and option years (Begin entry after 1 October 1989).

(60A) Estimated Dollar Savings ($000). The DoD Component's estimated savings from the cost comparison for the base year plus option

* Data elements (56) and (56A) will only be completed by DoD Components that are participating in the pilot test of these data elements. Staff-hours expended will not include waiting time. The staff-hours expended for the management study phase will not be included or costed, since this is a practice used throughout the organization, irrespective of the A-76 program.

years, in thousands of dollars, rounded to the nearest thousand, for either in-house or contract performance. Documentation will be available at the DoD Component level (Begin entry after 1 October 1989).

(61) Contract or In-House Bid First Performance Period ($000). For studies resulting in continued in-house performance, enter the total in-house cost (Line 6 from the CCF) for the first performance period. For studies resulting in conversion to contract performance, enter the contract price (Line 7 from the CCF) for the first performance period. Figures shall be shown in thousands of dollars, rounded to the nearest thousand.

(61A) Actual Contract Costs First Performance Period ($000). Enter the actual first performance period contract cost including all change orders (Plus changes in the scope of work), in thousands of dollars, rounded to the nearest thousand. No entry is required when the function remained in-house.

(61B) Adjusted Contract Costs First Performance Period ($000). Enter an adjusted first performance period contract cost that includes actual DoL wage increases and costs for omissions and/or errors in the original PWS, but exclude new requirement costs and their associated wage increases, in thousands of dollars, rounded to the nearest thousand (Begin entry after 1 October 1989).

(61C) Adjusted In-House Costs First Performance Period ($000). Enter the total first performance period in-house cost of the MEO, including civil service pay increases, but excluding increases associated with new mission requirements not included in the original scope of work of the function. Show costs in thousands of dollars, rounded to the nearest thousand. Entry is required even if the function went to contract. (Begin entry after 1 October 1989).

(61D) Actual In-House Costs First Performance Period Only ($000). Enter the actual first performance period in-house cost including changes in the scope of work, in thousands of dollars, rounded to the nearest thousand. No entry is required when the function is contracted and is not required for the CAMIS data base for the second and third performance periods (Begin entry after 1 October 1989).

(61E) (Leave blank).

(62) Contract or In-House Bid Second Performance Period ($000). For studies resulting in continued in-house performance, enter the total in-house cost (Line 6 from the CCF) for the second performance period. For studies resulting in conversion to contract performance, enter the contract price (Line 7 from the CCF) for the second performance period. Figures shall be shown in thousands of dollars, rounded to the nearest thousand.

(62A) Actual Contract Costs Second Performance Period ($000). Enter the actual second performance period contract cost including all change orders (Plus changes in the scope of work), in thousands of dollars, rounded to the neatest thousand. No entry is required when the function remained in-house.

(62B) Adjusted Contract Costs Second Performance Period ($000). Enter an adjusted second performance period contract cost that includes actual DoL wage increases and costs for omissions and/or errors in the original PWS, but exclude new requirement costs and their associated wage increases, in thousands of dollars, rounded to the nearest thousand (Begin entry after 1 October 1989).

(62C) Adjusted In-House Costs Second Performance Period ($000). Enter the total second performance period in-house cost of the MEO, including civil service pay increases, but excluding increases associated with new mission requirements not included in the original scope of work of the function. Show costs in thousands of dollars, rounded to the nearest thousand. Entry is required even if the function went to contract (Begin entry after 1 October 1989).

(62D) (Leave blank).

(63) Contract or In-House Bid Third Performance Period ($000). For studies resulting in continued in-house performance, enter the total in-house cost (Line 6 from the CCF) for the third performance period. For studies resulting in conversion to contract performance, enter the contract price (Line 7 from the CCF) for the third performance period. Figures shall be shown in thousands of dollars, rounded to the nearest thousand.

(63A) Actual Contract Costs Third Performance Period ($000). Enter the actual third performance period contract cost including all change orders (Plus changes in the scope of work), in thousands of dollars, rounded to the nearest thousand. No entry is required when the function remained in-house.

(63B) Adjusted Contract Costs Third Performance Period ($000). Enter an adjusted third performance period contract cost that includes actual DoL wage increases and costs for omissions and/or errors in the original PWS, but exclude new requirement costs and their associated wage increases, in thousands of dollars, rounded to the nearest thousand (Begin entry after 1 October 1989).

(63C) Adjusted In-House Costs Third Performance Period ($000). Enter the total third performance period in-house cost of the MEO, including civil service pay increases, but excluding increases associated with new mission requirements not included in the original scope of work of the function. Show costs in thousands of dollars, rounded to the nearest thousand. Entry is required even if the function went to contract (Begin entry after 1 October 1989).

(63D) (Leave blank).

(64) Contractor Change. Enter one of the following alpha designators to indicate whether the contract for the second or third performance period has changed from the original contractor.

N—No, the contractor has not changed.
Y—Yes, the contractor has changed.

Data elements (65) through (66) of this section, are not required if the answer to data element (64), of this section, is no (N).

(65) New Contractor Size (If data element (66), below, contains the alpha designator "I" or "R," no entry is required).

L—New contractor is large business
S—New contractor is small and/or small disadvantaged business.

(66) Reason for Change. DoD Components shall enter one of the following designators listed below, followed by the last two digits of the FY in which the change occurred.

C—Contract workload consolidated with other existing contract workload.
D—New contractor takes over because original contractor defaults.
I—Returned in-house because original contractor defaults within 12 months of start date and in-house bid is the next lowest.
N—New contractor replaced original contractor because Government opted not to renew contract in option years.
R—Returned in-house temporarily pending resolicitation due to contract default, etc.
U—Contract workload consolidated into a larger (umbrella) cost comparison.

(67) Contract Administration Staffing. The actual number of contract administration personnel hired to administer the contract.

Camis Entry and Update Instruction

Part II—Direct Conversions and Simplified Cost Comparisons

The bracketed number preceding each definition in Sections One through Six, of this section is the DoD data element number. All date fields should be in the format YYMMDD (Data element reference DA–FA).

Section One

EVENT: DoD Component Approves the CA Action

All entries in this section of the DCSCC record shall be submitted by DoD Components on approving the start of a cost comparison. These entries shall be used to establish the DCSCC and to identify the geographical, organizational, political, and functional attributes of the activity (or activities) undergoing conversion/comparison as well as to provide an initial estimate of the manpower associated with the activity (or activities). The initial estimate of the personnel in this section of the DCSCC will be, in all cases, those personnel figures identified in the correspondence approving the start of the conversion/comparison. DoD Components shall enter the following data elements to establish a DCSCC:

(1) Direct Conversion/Simplified Cost Comparison Number. The number assigned by the DoD Component to uniquely identify a specific conversion/comparison. The first character of the conversion/comparison number must be a letter designating the DoD Component as noted in data element (3) of this section. The conversion/comparison number may vary in length from 5 to 10 characters, of which the second and subsequent may be alpha or numeric and assigned under any system desired by the DoD Component.

(2) Approval Date. The date the simplified cost comparison or direct conversion was approved.

(3) DoD Component Code. Use the following codes to identify the Military Service or Defense Agency/Field Activity conducting the cost comparison:

A—Department of the Army
B—Defense Mapping Agency (DMA)
C—Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) (3D1)
D—Washington Headquarters Service (WHS) (3D2)

F—Department of the Air Force
G—National Security Agency/Central Security Service (NSA/CSS)
H—Defense Nuclear Agency (DNA)
J—Joint Chiefs of Staff (including the Joint Staff, Unified and Specified Commands, and Joint Service Schools)
K—Defense Information Systems Agency (DISA)
L—Defense Intelligence Agency (DIA)
M—United States Marine Corps (USMC)
N—United States Navy (USN)
R—Defense Contract Audit Agency (DCAA)
S—Defense Logistics Agency (DLA)
T—Defense Security Assistance Agency (DSAA)
V—Defense Investigative Service (DIS)
W—Uniformed Services University of the Health Sciences (USUHS)
Y—U.S. Army Corps of Engineers (USACE) Civil Works
2—Defense Finance & Accounting Service (DFAS)
3—Defense Commissary Agency (DeCA)

(4) Command Code. The code established by the DoD Component Headquarters to identify the command responsible for operating the CA undergoing conversion/comparison. A separate look-up listing or file shall be provided to the DMDC showing each unique command code and its corresponding command name. If the DoD Component chooses to submit the look-up table on diskette or tape, the format should be as follows:

Column	Entry
1 through 6 (left justify)	command code.
7	blank.
8 through 80 (left justify)	command code.

(5) Installation Code. The alpha and/or numeric designation established by the DoD Component Headquarters to identify the installation where the CA(s) under conversion/comparison is and/or are located physically. Two or more codes (for conversion/comparison packages encompassing more than one installation) should be separated by commas. A separate look-up listing or file shall be provided to the DMDC showing each unique installation code and its corresponding installation name. Also submission of the installation name in each record is allowed. If the DoD Component chooses to submit the look-up listing on diskette or tape, the format shall be as follows:

Column	Entry
1 through 10 (left justify)	installation code.
11	blank.
12 through 80 (left justify)	installation name.

The DMDC shall generate the installation name corresponding to the installation code submitted by the DoD Component, and display it with the code on the CAMIS.

(6) State Code. A two-position numeric code for the State (Data element reference ST-GA.) or State Equivalent (FIPS 55-2), as shown in attachment 1 to Appendix B of this part, where data element (5) of this section is located. Two or more codes shall be separated by commas.

(7) Congressional District (CD) Code. Number of the CDs where date element (5) of this section, is located. If representatives are elected "at large," enter "01" in this data element; for a delegate or resident commissioner (i.e., District of Columbia or Puerto Rico) enter "98." If the installation is located in two or more CDs, all CDs should be entered and separated by commas.

(8) JIRSG Area Code. The JIRSG Area that data element (5) of this section is assigned to for coordination of the DRIS Program, DoD 4000.19-R. This is a four-character alpha and/or numeric date element. For instance, "NO15" is the National Capitol Region (NCR) (as published in the "DRIS Point of Contact Directory").

NOTE: A DoD Component may report corresponding multiple values for the following geographical data elements: State, CD, and JIRSG area code. These values shall be grouped and punctuated, as shown in the example, below, so that the proper relationship can be established between each installation code value and its corresponding set of geographical attribute values.

(5) Installation code: AAAAA,BBBBB,CCCCC.
(6) State code: 13,06,34.
(7) CD code: 05,06;42,15.
(8) JIRSG area code: S003,WE10,*.

When multiple values within a data element are reported for a single installation code, semicolons shall be used to separate each series of values and to indicate correspondence of each series to its respective installation value; commas shall be used to separate the values within a series. When only a single value (within a data element) is reported for each installation, the values shall be separated by commas. To denote an unknown or missing number of a series of values, the asterisk (*) symbol should be used.

The conversion/comparison package, above, involves three installations: AAAAA, BBBBB, and CCCCC. The first is located in Georgia, the second in California, and the third in New Jersey. AAAAA is in Georgia's 5th and 6th CDs, BBBBB is in California's 42nd CD, and CCCCC is in New Jersey's 15th CD. The first two installations are in JIRSG areas S003, and WE10, respectively, CCCCC is not within a JIRSG area.

(9) Title of Conversion/Comparison. The title that describes the CA(s) under conversion/comparison (for instance, "Facilities Engineering Package," "Installation Bus Service," or "Motor Pool"). Use a clear title, not acronyms or function codes in this data element.

(10) DoD Functional Area Code(s). The four- or five- alpha and/or numeric character designators listed in Appendix A of this part, that describes the type of CA undergoing conversion/comparison. This would be one code for a single CA or possibly several codes for a large cost comparison package. A series of codes shall be separated by commas.

(11) Prior Operation Code. A single alpha character that identifies the mode of operation for the activity at the time the conversion/comparison is started. Despite the outcome of the conversion/comparison, this code does not change. The coding is as follows:

C—Contract.
E—Expansion.
I—In-house.
N—New requirement.

(12) Conversion/Comparison Status Code. A single alpha character that identifies the current status of the conversion/comparison. Enter one of the following codes:

B—Broken out. The cost comparison package has been broken into two or more separate cost comparisons. The previous DCSCCR shall be excluded from future updates. (See data element (15) of this section).
C—Complete.
P—In progress.
X—Canceled. The DCSCCR shall be excluded from future updates.
Z—Consolidated. The cost comparison has been consolidated with one or more other cost comparisons into a single cost comparison package. The DCSCCR for the cost comparison that has been consolidated shall be excluded from future updates. (See data element (15) of this section).

(13) Announcement—Personnel Estimate Civilian, and (14) Announcement—Personnel Estimate Military. The number of civilian and military personnel allocated to the CAs undergoing conversion/comparison at the time the start of the conversion/comparison is approved. This number in all cases shall be those personnel figures identified when the conversion/comparison was approved and will include authorized positions, temporaries, and borrowed labor. The number is used to give a preliminary estimate of the size of the activity.

(15) Revised and/or Original Cost Comparison Number. When a consolidation occurs, create a new DCSCC containing the attributes of the consolidated conversion/comparison. In the DCSCC of each conversion/comparison being consolidated, enter the conversion/comparison number of the new DCSCC in this data element and code "Z" in data element (12) of this section. In the new DCSCC, this data element should be blank and data element (12) of this section, should denote the current status of the conversion/comparison. Once the consolidation has occurred, only the new DCSCC requires future updates.

When a single conversion/comparison is being broken into multiple conversion/comparisons, create a new DCSCC for each conversion/comparison broken out from the original conversion/comparison. Each new DCSCC shall contain its own unique set of attributes; in date element (15) of this section, enter the conversion/comparison number of the original conversion/comparison from which each was derived, and in data element (12) of this section, enter the current status of each conversion/comparison. For the original conversion/comparison, data element (15) of this section, should be blank and data element (12) of this section, should have a

code "B" entry. Only the derivative record entries require future updates.

When a consolidation or a breakout occurs, an explanatory remark shall be entered in data element (56) of this section (such as, "part of SW region cost comparison," or, "separated into three cost comparisons").

(16) PWS Scheduled Completion Date. The date the approved PWS is anticipated to be provided to the contracting officer for solicitation preparation at the start of a cost comparison.

(16A) PWS Actual Completion Date. The date the approved PWS is provided to the contracting officer for solicitation preparation.

Section Two

Event: The Solicitation is Issued

The entries in this section of the DCSCC provide information on the personnel authorized to perform the workload in the PWS, the number of workyears used to accomplish the workload in the PWS, and the type and kind of solicitation.

The DoD Component shall enter the following data elements at the first quarterly update subsequent to the issuance of the solicitation:

(17) Scheduled Solicitation Issuance Date. The date of solicitation as anticipated at the start of a cost comparison.

(17A) Date Solicitation Issued. The date the solicitation is issued by the contracting officer.

(18) Solicitation-Type Code. A one-character alpha designator that identifies the type of solicitation used to obtain contract bids or offers. Use either the CBD as the source document or information received from the contracting officer for this entry. Solicitations under section 8(a) of "The Small Business Act" are negotiated. Enter one of the following codes:

N—Negotiated.
S—Sealed Bid.

(19) Solicitation-Kind Code. A one-character (or two-character, if "W" suffix is used) alpha designator indicating whether the competition for the contract has been limited to a specific class of bidders or offerors. Use either the CBD as the source document or information received from the contracting officer to enter one of the following codes:

A—Restrict to small business.
B—Small Business Administration 8(a) Set Aside.
C—"Javits-Wagner-O'Day Act" (JWOD).
D—Other mandatory sources.
U—Unrestricted.
W—(Optional suffix) Unrestricted after initial restriction.

(20) Current Authorized Civilians, and (21) Current Authorized Military. The number of civilian and military authorizations allocated on the DoD Component's manpower documents to perform the work described in the PWS. This number refines the initial authorization estimate (Section One, data elements (13) and (14) of this section).

(22) Baseline Annual Workyears Civilian, and (23) Baseline Annual Workyears Military. The number of annual workyears it has taken to perform the work described by the PWS before the DoD Component conducts the MEO study of the in-house organization. Do not include contract monitor requirements. Military workyears include assigned, borrowed, diverted, and detailed personnel.

An annual workyear is the use of 2,087 hours (including authorized leave and paid time off for training). For example, when full-time employees, whose work is completely within the PWS are concerned, "one workyear" normally is comparable to "one employee" or two part-time employees, each working 1,043 hours in a FY. Also include in this total, the workyears for employees who do not work full-time on the work described by the PWS. For example, some portion of the workload is performed by persons from another work center who are used on an as needed basis. Their total hours performing that workload is 4,172 hours. This would be reflected as 2 workyears. Less than one-half a year of effort should be rounded down, and one-half a year or more should be rounded up.

Those workyear figures shall be the baseline for determining the personnel savings identified by the management study.

Section Three

Event: The In-House and the Contractor Costs of Operation are Compared

The entries in this section provide information on the date of the conversion/comparison (initial decision), the preliminary results, the number of bids or offers received, and the costing method used in the conversion/comparison.

The DoD Component shall enter the following data elements in the first quarterly update subsequent to the date of the comparison of in-house and contractor costs (date of initial decision):

(24) Scheduled Initial Decision Date. Date the initial decision is scheduled at the start of a conversion/comparison.

(24A) Actual Initial Decision Date. Date the initial decision is announced. The initial decision is based on the apparent low bid or offer and is subject to preaward surveys and resolution of all appeals and protests. In a sealed bid procurement, the initial decision is announced at bid opening. In a negotiated procurement, the initial decision is announced when the cost comparison is made between the in-house estimate and the proposal of the selected offeror. In a conversion, the initial decision is announced when the in-house cost estimate is evaluated against proposed contractor proposals.

(25) Cost Comparison Preliminary Results Code. A one-character alpha designator indicating the results of the cost comparison as announced by the contracting officer at the time of the comparison (No entry required for a direct conversion). The entries are limited to two possibilities:

C—Contract.
I—In-house.

(26) Cost Method Code. A one-character numeric designator indicating the procedures under which the conversion/comparison was and/or is being conducted. Enter one of the following codes:

1—Simplified cost comparison conducted under the new costing procedures in the OMB Circular A-76 published August 4, 1983, and implemented by the Department of Defense in March 1984.
2—Direct conversion implemented by the Department of Defense in October 1988.

(27) Number of Bids or Offers Received. The number of commercial bids or offers received by the contracting officer.

Section Four

Event: The Contracting Officer Either Awards the Contract or Cancels the Solicitation

The entries in this section identify the final result, information on the contract, the in-house bid, and costing information from the direct conversion/simplified cost comparison fact sheet.

The DoD component shall enter the following data elements in the first quarterly update subsequent to the date the contracting officer either awards a contract or cancels the solicitation:

(28) Contract Award or Solicitation Cancellation Date. For conversions to contract, this is the date a contract was awarded in a sealed bid solicitation or the date the contractor was authorized to proceed on a conditional award contract in a negotiated solicitation. For retentions in-house, this is the date the solicitation was canceled (when the contracting officer publishes an amendment to cancel the solicitation).

(29) Cost Comparison Final Result Code. A one-character alpha designator identifying the final result of the comparison between in-house and contractor costs; the contracting officer either awards the contract or cancels the solicitation. Enter one of the following codes:

C—Contract.
I—In-house.

(30) Decision Rationale Code. A one-character alpha designator that identifies the rationale for awarding a contract or canceling the solicitation. The work shall be performed in-house or by contractor based on cost, for other than cost, or the work shall be performed in-house because no satisfactory commercial source was available (no bids or offers were received or the pre-award survey resulted in the determination that no commercial sources were responsive or responsible). Enter one of the following codes:

C—Cost.
N—No satisfactory commercial source.
O—Other.

(31) contract-Type Code. Enter one of the following alpha designators for the type of contract used in the cost comparison. This entry is required for all completed studies, regardless of their outcome.

CPAF—Cost Plus Award Fee.
CPFF—Cost Plus Fixed Fee.
CPIF—Cost Plus Incentive FEE.
FFP—Firm Fixed Price.
FP-EPA—Fixed Price with Economic Price Adjustment.
FPI—Fixed Price Incentive.
TM-LH—Time and Material or Labor Hour.

(31A) Prime Contractor Size. Enter one of the following:

L—Large business.
S—Small or small and/or disadvantaged business.

(32) MEO Workyears. The number of annual workyears it takes to perform the work described in the PWS after the MEO study has been conducted. This entry will be equal to the number of annual workyears in the in-house bid (No entry required for a direct conversion).

For data elements (33) through (36) of this section, enter all data after all adjustments required by appeal board decisions. Do not include minimum cost differential in the computation of any of these data elements. If a valid conversion/comparison was not conducted (i.e., all bidders or offerors disqualified, no bids or offers received, etc.) do not complete data elements (33), (34) and (36) of this section. Explain lack of valid cost data in data element (56) of this section, "DoD Component Comments".

(33) First Performance Period. Expressed in months, the length of time covered by the contract. Do not include any option periods.

(34) Conversion/Comparison Period. Expressed in months, the total period of operation covered by the conversion or cost comparison; this is the period used as the basis for data elements (35) and (36) of this section.

(35) Total In-House Cost ($000). Enter the total estimated cost of in-house performance for the base year plus option years, in thousands of dollars, rounded to the nearest thousand. An entry is required although the activity remains in-house due to absence of a satisfactory commercial source (No entry required for a direct conversion).

(36) Total Contract Cost ($000). Enter the total estimated cost of contract performance for the base year plus option years, in thousands of dollars, rounded to the nearest thousand.

(37) Notification Date. The date the MEO certification is sent to Congress. DoD Components shall enter a date when data element (20) of this section, contains a figure greater than 10 (No entry required for a direct conversion).

(37A) Scheduled Contract or MEO Start Date. Date the contract and/or MEO was scheduled to start at the beginning of a conversion/comparison.

Section Five

Event: The Contract Starts

The entries in this section identify the contract start date and the personnel actions taken as a result of the conversion/comparison.

The DoD Component shall enter the following data elements in the first quarterly update subsequent to the start of the contract:

(38) contract/MEO Start Date. The actual date the contractor began operation of the contract or the Government implements the MEO.

(39) Permanent Employees Reassigned to Equivalent Positions. The number of permanent employees who were reassigned to positions of equivalent grade as of the contract start date.

(40) Permanent Employees Changed to Lower Positions. The number of permanent employees who were reassigned to lower grade positions as of the contract start date.

(41) Employees Taking Early Retirement. The number of employees who took early retirement as of the contract start date.

(42) Employees Taking Normal Retirement. The number of employees who took normal retirement as of the contract start date.

(43) Permanent Employees Separated. The number of permanent employees who were separated from Federal employment as of the contract start date.

(44) Temporary Employees Separated. The number of temporary employees who were separated from Federal employment as of the contract start date.

(45) Employees Entitled to Severance Pay. The estimated number of employees entitled to severance pay on their separation from Federal employment as of the contract start date.

(46) Total Amount of Severance Entitlements ($000). The total estimated amount of severance to be paid to all employees, in thousands of dollars, rounded to the nearest thousand, as of the contract start date.

(47) Number of Employees Hired by the Contractor. The number of estimated DoD civilian employees (full-time or otherwise) that will be hired by the contractors, or their subcontractors, at the contract start date.

Administrative Appeal

(48) Filed. Were administrative appeals filed?

N—No.
Y—Yes.

(49) Source. Who filed the appeal?

B—Both.
C—Contractor.
I—In-House.

(50) Result. Were the appeals finally upheld? (if both appealed, explain result in data element (56) of this section).

N—No.
P—Still in Progress.
Y—Yes.

GAO Protest

(51) Filed. Was a protest filed with GAO?

N—No.
Y—Yes.

(52) Source. Who filed the protest?

B—Both.
C—Contractor.
I—In-House.

(53) Result. Was the protest finally upheld? (explain result in data element (56) of this section).

N—No.
P—Still in Progress.
Y—Yes.

Arbitration

(54) Requested. Was there a request for arbitration?

N—No.
Y—Yes.

(55) Result. Was the case found arbitratible? (explain result in data element (56) of this section).

N—No.
P—Still in Progress.
Y—Yes.

General Information

(56) DoD Component Comments. Enter comments, as required, to explain situations that affect the conduct of the conversion/comparison. Where appropriate, precede each comment with the CAMIS data element being referenced.

(57) Effective Date. "As of" date of the most current update for the conversion/comparison. This data element will be completed by the DMDC.

(58) (Leave blank, for DoD computer program use).

Section Six

Event: Quarter Following Contract and/or Option Renewal

The entries in this section identify original costs, savings, information on subsequent performance periods and miscellaneous contract data. The DoD Component shall enter the following data elements in the first quarterly update annually.

(59) Actual Contract Cost First Performance Period ($000). Enter the actual contractor cost for the first performance period, in thousands of dollars, rounded to the nearest thousand.

(60) Actual Contract Cost Second Performance Period ($000). Enter the actual contractor cost for the second performance period, in thousands of dollars, rounded to the nearest thousand.

(61) Actual Contract Cost Third Performance Period ($000). Enter the actual contractor cost for the third performance period, in thousands of dollars, rounded to the nearest thousand.

(62) Contractor Change. Enter one of the following alpha designator to indicate whether the contract for the second or third performance period has changed from the original contractor.

N—No, the contractor has not changed.
Y—Yes, the contractor has changed.

Data elements (63) through (64) of this section, are not required if the answer to data element (62) of this section, is no (N).

(63) New Contractor Size (If data element (64) of this section contains the alpha designator "I" or "R," no entry is required).

L—New contractor is large business.
S—New contractor is small and/or small disadvantaged business.

(64) Reason for Change. DoD Components shall enter one of the following designators listed below, followed by the last two digits of the FY in which the change occurred.

C—Contract workload consolidated with other existing contract workload.
D—New contractor takes over because original contractor defaults.
I—Returned in-house because of original contractor defaults; etc., within 6 months of start date and in-house bid is the next lowest.

N—New contractor replaced original contractor because Government opted not to renew contract in option years.

R—Returned in-house temporarily pending resolicitation due to contract default, etc.

U—Contract workload consolidated with other existing contract workload.

(65) Contract Administration Staffing. The actual number of contract administration personnel hired to administer the contract.

Attachment 1 to Appendix D to Part 169a—Cost Comparison Record (CCR)

Section One

(1) Cost Comparison Number: ____ (2) Announcement and/or Approval Date: ____

(3) DoD Component Code: ____ (4) Command Code: ____ (5) Installation Code: ____

(6) State Code: ____ (7) CD Code: ____ (8) JIRSG Area Code: ____

(9) Title of Cost Comparison: ____

(10) DoD Functional Area Code(s): ____

(11) Prior Operation Code: ____ (12) Cost Comparison Status Code: ____

(13) Announcement—Personnel Estimate Civilian: ____

(14) Announcement—Personnel Estimate Military: ____

(15) Revised and/or Original Cost Comparison Number: ____

(16) PWS Scheduled Completion Date: ____ (16A) PWS Actual Completion Date: ____

Section Two

(17) Scheduled Solicitation Issuance Date: ____ (17A) Date Solicitation Issued: ____

(18) Solicitation-Type Code: ____ (19) Solicitation-Kind Code: ____

(20) Current Authorized Civilian: ____ (21) Current-Authorized Military: ____

(22) Baseline Annual Workyears Civ: ____ (23) Baseline Annual Workyears Mil: ____

Section Three

(24) Scheduled Initial Decision Date: ____ (24A) Actual Initial Decision Date: ____

(25) Cost Comparison Preliminary Results Code: ____ (26) Cost Method Code: ____

(27) Number of Bids or Offers Received: ____

Section Four

(28) Contract Award or Solicitation Cancellation Date: ____

(29) Cost Comparison Final Result Code: ____ (30) Decision Rational Code: ____

(31) Contract-Type Code: ____ (31A) Prime Contractor Size: ____ (32) MEO Workyears: ____

(33) First Performance Period: ____ (34) Cost Comparison Period: ____

(35) Total In-House Cost ($000): ____ (36) Total Contract Cost ($000): ____

(37) Notification Date: ____ (37A) Scheduled Contract or MEO Start Date: ____

Section Five

(38) Contract/MEO Start Date: ____

(39) Permanent Employees Reassigned to Equivalent Positions: ____

(40) Permanent Employees Changed to Lower Positions: ____

(41) Employees Taking Early Retirement: ____

(42) Employees Taking Normal Retirement: ____

(43) Permanent Employees Separated: ____

(44) Temporary Employees Separated: ____

(45) Employees Entitled to Severance Pay: ____

(46) Total Amount of Severance Entitlements ($000): ____

(47) Number of Employees Hired by the Contractor: ____

Administrative Appeal

(48) Filed: ____ (49) Source: ____ (50) Result: ____

GAO Protest

(51) Filed: ____ (52) Source: ____ (53) Result: ____

Arbitration

(54) Requested: ____ (55) Result: ____

General Information

(56) Total Staff-Hours Expended: ____

(56A) Estimated Cost of Conducting the Cost Comparison: ____

(57) DoD Component Comments: ____

(58) Effective Date: ____

(59) (Leave blank)

Section Six

(60) Original Cost of Function(s) ($000): ____ (60A) Estimated Dollar Saving ($000): ____

(61) Contract or In-House Bid First Performance Period ($000): ____

(61A) Actual Contract Costs First Performance Period ($000): ____

(61B) Adjusted Contract Costs First Performance Period ($000): ____

(61C) Adjusted In-House Costs First Performance Period ($000): ____

(61D) Actual In-House Costs First Performance Period Only ($000): ____

(61E) (Leave blank)

(62) Contract or In-House Bid Second Performance Period ($000): ____

(62A) Actual Contract Costs Second Performance Period ($000): ____

(62B) Adjusted Contract Costs Second Performance Period ($000): ____

(62C) Adjusted In-House Costs Second Performance Period ($000): ____

(62D) (Leave blank)

(63) Contract or In-House Bid Third Performance Period ($000): ____

(63A) Actual Contract Costs Third Performance Period ($000): ____

(63B) Adjusted Contract Costs Third Performance Period ($000): ____

(63C) Adjusted In-House Costs Third Performance Period ($000): ____

(63D) (Leave blank)

(64) Contractor Change: ____ (65) New Contractor Size: ____

(66) Reason for Change: ____ (67) Contract Administrative Staffing: ____

Attachment 2 to Appendix D to Part 169a—Direct Conversion and Simplified Cost Comparison Record (DCSCCR)

Section One

(1) Direct/Simplified Cost Comparison Number: ____ (2) Approval Date: ____

(3) DoD Component Code: ____ (4) Command Code: ____ (5) Installation Code: ____

(6) State Code: ____ (7) CD Code: ____ (8) JIRSG Area Code: ____

(9) Title of Conversion/Comparison: ____

(10) DoD Functional Area Code(s): ____

(11) Prior Operation Code: ____ (12) Conversion/Comparison Status Code: ____

(13) Announcement—Personnel Estimate Civilian: ____

(14) Announcement—Personnel Estimate Military: ____

(15) Revised and/or Original Conversion/Comparison Number: ____

(16) PWS Scheduled Completion Date: ____ (16A) PWS Actual Completion Date: ____

Section Two

(17) Scheduled Solicitation Issuance Date: ____ (17A) Date Solicitation Issued: ____

(18) Solicitation-Type Code: ____ (19) Solicitation-Kind Code: ____

(20) Current Authorized Civilian: ____ (21) Current-Authorized Military: ____

(22) Baseline Annual Workyears Civ: ____ (23) Baseline Annual Workyears Mil: ____

Section Three

(24) Scheduled Initial Decision Date: ____ (24A) Actual Initial Decision Date: ____

(25) Cost Comparison Preliminary Results Code: ____ (26) Cost Method Code: ____

(27) Number of Bids or Offers Received: ____

Section Four

(28) Contract Award or Solicitation Cancellation Date: ____

(29) Cost Comparison Final Result Code: ____ (30) Decision Rational Code: ____

(31) Contract-Type Code: ____ (31A) Prime Contractor Size: ____ (32) MEO Workyears: ____

(33) First Performance Period: ____ (34) Conversion/Comparison Period: ____

(35) Total In-House Cost ($000): ____ (36) Total Contract Cost ($000): ____

(37) Notification Date: ____ (37A) Scheduled Contract or MEO Start Date: ____

Section Five

(38) Contract Start Date: ____

(39) Permanent Employees Reassigned to Equivalent Positions: ____

(40) Permanent Employees Changed to Lower Positions: ____

(41) Employees Taking Early Retirement: ____

(42) Employees Taking Normal Retirement: ____

(43) Permanent Employees Separated: ____

(44) Temporary Employees Separated: ____

(45) Employees Entitled to Severance Pay: ____

(46) Total Amount of Severance Entitlements ($000): ____

(47) Number of Employees Hired by the Contractor: ____

Administrative Appeal

(48) Filed: _____ (49) Source: _____ (50) Result: _____

GAO Protest

(51) Filed: _____ (52) Source: _____ (53) Result: _____

Arbitration

(54) Requested: _____ (55) Result: _____

(56) DoD Component Comments: _____

(57) Effective Date: _____ (58) (Leave blank): _____

Section Six

(59) Actual Contract Costs First Performance Period ($000): _____

(60) Actual Contract Cost Second Performance Period ($000): _____

(61) Adjusted Contract Costs Third Performance Period ($000): _____

(62) Contractor Change: _____ (63) New Contractor Size: _____

(64) Reason for Change: _____ (65) Contract Administrative Staffing: _____

Appendix E [Amended]

15. Appendix E is proposed to be amended by revising the heading to read: "Appendix E to part 169a–Public Law 96–342, as amended and by 97–252, Public Law 99–145, and Public Law 99–661 (Hereafter referred to as Section 502)"; paragraph (2)(D)(i) by changing "50" to "75"; paragraph (2)(D)(iii)(d) by changing "(a)(1)" to "(a)(2)" and changing "ten" to "45".

Dated: December 10, 1991.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 91–30348 Filed 12–26–91; 8:45 am]

BILLING CODE 3810–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80 and 86

[FRL–4067–8]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines: Evaporative Emission Regulations for Gasoline- and Methanol-Fueled Light-Duty Vehicles and Light-Duty Trucks and Heavy-Duty Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public workshop; changed date.

SUMMARY: This notice announces a change in the date for the public workshop related to EPA's proposed evaporative emission control regulations.

DATES: The public workshop will be held on January 28, 1992. It will start at 9 a.m. and will continue throughout the day as long as necessary to complete testimony. Comments will be accepted until February 11, 1992.

ADDRESSES: The public workshop will be at Ulrich Hall, Domino's Farms, 24 Frank Lloyd Wright Dr., Ann Arbor, Michigan 48105 (telephone 313–930–5032).

FOR FURTHER INFORMATION CONTACT: Mr. Alan Stout, Standards Development and Support Branch, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Telephone: (313) 741–7805.

For copies of support documents, contact: Ms. Margaret Borushko, (313) 668–4272.

SUPPLEMENTARY INFORMATION: On December 17, 1991 EPA published a notice in the **Federal Register** announcing a public workshop related to EPA's proposed evaporative emission control regulations (56 FR 65461). In response to requests from the Association of International Automobile Manufacturers and the Motor Vehicle Manufacturers Association, EPA is changing the date of the workshop from January 8, 1992 to January 28, 1992.

The official record of the workshop will be kept open for 14 days following the workshop to allow submission of rebuttal and supplementary testimony.

Mr. Richard D. Wilson, Director of the Office of Mobile Sources, will be the presiding officer of the workshop. A court reporter will be present at the workshop to make a transcript of the proceedings and a copy will be placed in the docket. Anyone desiring a copy of the transcript should make individual arrangements with the court reporter at the time of the workshop.

Dated: December 20, 1991.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 91–30970 Filed 12–26–91; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91–49; Notice 1]

RIN 2127–AE29

Federal Motor Vehicle Safety Standards, Electric Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This advance notice of proposed rulemaking requests comments on potential safety-related issues associated with the use of electric vehicles and solicits ideas on whether NHTSA should, and if so how it might, address those problems through possible new and amended Federal Motor Vehicle Safety Standards. The purpose of this notice is to solicit comments to help NHTSA determine what existing Standards may need modification to meet the needs associated with the introduction of significant numbers of electric vehicles and what new Standards may have to be written specifically for electric vehicles.

DATES: The comment closing date for the advance notice is March 27, 1992.

ADDRESSES Comments should refer to the docket number and notice number shown above and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Samuel Daniel, Office of Rulemaking, NHTSA (202–366–4921).

SUPPLEMENTARY INFORMATION:

I. Introduction

The National Highway Traffic Safety Administration (NHTSA) is reviewing the safety needs of electrically powered vehicles (EVs) and considering possible rulemaking. The agency is taking this action in response to the increasing attention being given EVs as a means of achieving a cleaner and healthier environment. Due primarily to Federal and State requirements based upon environmental considerations, EVs appear likely to be introduced into the nation's motor vehicle fleet in significant numbers within the next 3 to 5 years.

NHTSA has twice previously reviewed the Federal Motor Vehicle Safety Standards (FMVSS) to determine their appropriateness for electric vehicles and published the findings in response to Congressional requirements. On those occasions, the agency concluded that all FMVSS are applicable to EVs although some of the crash avoidance standards may have to be revised because they contain text specifically addressing internal combustion engines or engine components. The agency also concluded that additional safety standards may be required by unique EV safety hazards. Most of these unique problems concern battery re-charging and the management of battery materials during a collision.

No rulemaking was initiated by the agency following those earlier reviews because the prospect of significant numbers of EVs being produced was much more uncertain than it is now.

The purpose of this advance notice is to seek comments on any existing safety standards that may need to be amended to address EV safety problems, and any new standard that may need to be developed specifically for EVs. Under the National Traffic and Motor Vehicle Safety Act of 1966 (the Act), NHTSA is responsible for establishing safety standards for new vehicles and equipment to reduce motor vehicle accidents, deaths, and injuries. NHTSA is issuing this notice now because it wishes to have any necessary safety standards in place as soon as possible to support the safe introduction and operation of EVs. To delay rulemaking until significant production of EVs actually begins could not only fail to prevent avoidable safety problems, but also disrupt and impede the development and commercialization of EVs.

II. Background

The federal government has been involved in activities designed to stimulate the development and marketing of EVs since 1976 when the Electric and Hybrid Vehicle Research, Development, and Demonstration Act (Pub. L. 94–413) was enacted. Pursuant to that law, the Department of Energy (DOE) has sponsored the development of several hundred EVs and evaluated their performance over the past 10 years.

Public Law 94–413 also required the Department of Transportation (DOT) to conduct a study of the current and future applicability of the FMVSS and regulations to electric and hybrid vehicles. NHTSA published a study of EV safety requirements in 1978 entitled "Applicability of Federal Motor Vehicle Safety Standards to Electric and Hybrid Vehicles." The study found that most existing FMVSS were suitable, although some containing reference to internal combustion engines or engine components would require modifications. The study also determined that new FMVSS may be necessary to address safety hazards unique to EVs. Specifically, it identified one standard addressed to isolating the electrical system from the occupant compartment to reduce the electric shock hazard, and another to the management of battery systems to reduce the potential for electrolyte spillage and explosion during a crash.

In 1988, the Alternative Motor Fuels Act (Pub. L. 100–494) was enacted. It included a requirement for a review by DOT, DOE, and the Environmental Protection Agency (EPA) of their respective regulations and a report identifying those rules or standards that are barriers to introduction of EVs into commerce. DOT's report to Congress in response to Public Law 100–494 is titled "Federal Regulations Needing Amendment to Stimulate the Production and Introduction of Electric/Solar Vehicles." The report, published in January 1990, reviewed EVs with respect to NHTSA safety regulations and procedures. The study concluded that EV performance (*i.e.*, range and acceleration) has been the major obstacle to the introduction of EVs into the marketplace and that federal safety standards have not been a significant obstacle. The initial cost of EVs has been another deterrent since it is not competitive with that of conventional internal combustion engine vehicles due, in large part, to low production volumes. The review reached many of the same conclusions regarding the applicability of the FMVSS to EVs that were reported in 1978 in response to Public Law 94–413. The principal conclusions in the later report were that existing standards for brakes, tires, and windshield defrosting and defogging will probably need to be modified so that they are suitable as they apply to EVs. The report also concluded that new standards might be required, primarily in the area of crashworthiness, to address the safety problems that electric propulsion systems might pose during a collision. The three areas of concern were the potential for electric shock hazard, occupant contact with toxic electrolytes, and battery system explosion.

Interest in the suitability of Federal regulations as they affect EVs has increased in the last several years in response to the efforts of many major foreign and domestic automobile manufacturers to develop electrically powered passenger cars, trucks, and multi-purpose vehicles (MPV). The manufacturers are also preparing to build demonstration vehicles for evaluation in 2 to 3 years. However, at this time, detailed information concerning EV development by other than major manufacturers is difficult to obtain. Small manufacturers, and companies which convert conventional vehicles to electric power have built and tested prototype EVs in the recent past and made public their intent to market EVs in the near future. The electrical energy storage systems for the initial models planned for introduction in the next 2 years will primarily be advanced lead-acid batteries. Considerable research has been conducted on sodium and zinc-based batteries as well as several other systems. It is anticipated that production EV's with these types of battery systems will be built in 4 to 6 years.

The primary impetus for the introduction of large numbers of EVs into the U.S. marketplace is a regulation of the California Air Resources Board. Similar regulations are under consideration by other States. The California regulation requires that not less than two percent of a manufacturer's sales in the State (roughly 40,000 vehicles total) must be zero emission vehicles (ZEVs), beginning in model year 1998. This requirement will increase to 10 percent or roughly 200,000 vehicles beginning in model year 2003. The definition of a ZEV is a vehicle that emits no exhaust or evaporative emission of any kind. Currently, the electric vehicle is the only vehicle which meets these requirements. The only other alternative fuel expected to meet the ZEV requirements is hydrogen fuel cells. However, this technology is still in the research and development stage.

III. Potential Problem Areas and Possible Solutions

As stated earlier, the purpose of this notice is to solicit comments to help NHTSA determine whether and how the existing FMVSS should be modified to improve their suitability for EVs, and to determine the types of any new standards that may be developed to address unique EV safety hazards.

Information and comments are requested from users and suppliers, manufacturers, government agencies, and all other interested persons. Commenters should bear in mind that the Federal motor vehicle safety standards established by NHTSA under the Vehicle Safety Act are performance-oriented standards. In commenting on a particular option or in responding to a particular question, commenters are requested to provide all relevant and factual information to support their conclusions or opinions. This should include, but not be limited to, statistical data, estimated costs and benefits, necessary manufacturer lead times, and the availability of technology. Accident data should also be provided including data related to vehicle fires, injuries, and fatalities. The sources of such information should be identified.

NHTSA emphasizes that this is an advance notice of proposed rulemaking. If the agency were ultimately to issue a final rule, it would do so only after first issuing a notice of proposed rulemaking seeking further comments.

A. Modifications to FMVSS to Improve Suitability

The FMVSS are organized into three main categories covering crash avoidance, crashworthiness, and post crash factors. Based on studies and reviews of the FMVSS's concerning their suitability for EVs, NHTSA has concluded that EVs should comply with the intent or purpose of all existing FMVSS. Several standards may require modifications, however, as some aspects of them are premised on types of technology, *e.g.*, internal combustion engines, not found in EVs. Specific comments are sought on how these standards might be modified. In addition, compliance of EVs with several existing safety standards is difficult, if not impossible, due to the characteristics of current EV designs, *e.g.*, range limitations, lack of on-board heat source, limited auxiliary power. Specific comments are sought on whether the performance requirements of these standards should be reduced for EVs, and, if so, what performance requirements would be appropriate. These issues are discussed in greater detail below.

Crash Avoidance Standards

1. FMVSS No. 102, *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect.* EVs with multi-speed transmissions that are not equipped with regenerative braking may have difficulty complying with the transmission braking provision of Standard No. 102 which requires transmission braking effects at speeds under 25 mph for automatic multi-speed transmissions.

The questions for which NHTSA seeks comment are:

(a) Should EVs be required to comply with the transmission braking effect requirements of Standard No. 102?

(b) What percentage of EVs are likely to be equipped with multi-speed automatic transmissions?

2. FMVSS No. 103, *Windshield Defrosting and Defogging Systems.* One provision of Standard No. 103 requires the defrosting and defogging system of a vehicle to be capable of melting specific amount of windshield ice within a specified time period after allowing a time period for engine warm-up. In the past, some EVs equipped with an on-board combustion heater have used them for defrosting and defogging systems, although there is no record of an Ev meeting the requirements of this portion of the standard. However, for EVs, the reference to engine warm-up is meaningless and may require revision.

The questions for which NHTSA seeks comments are:

(a) How should Standard No. 103 be modified to reflect the fact that an engine-warm-up period may not be needed and a warm-up time period for a combustion heater may need to be substituted?

(b) Should the requirements of Standard No. 103 be revised for EVs? If so, what requirements for EV defrosting and defogging would be appropraite? What effect would these modifications to Standard No. 103 have on EV safety?

3. FMVSS No. 105, *Hydraulic Brake Systems.* Standard No. 105 specifies requirements for hydraulic service brakes and associated parking brake systems. One of the standard's provisions is that the vehicle be placed in neutral for some of the tests. For EVs with direct drive systems and/or regenerative braking, this test procedure may be difficult to follow.

The questions for which NHTSA seeks comment are: do the test procedures of Standard No. 105 need to be modified for EVs equipped with regenerative braking and/or direct drive transmissions? If so, what should the modifications be?

Crashworthiness Standards

4. FMVSS No. 204, *Steering Control Rearward Displacement.* Standard No. 204 specifies the maximum rearward displacement of the steering control system during a 30 mph rigid barrier collision. It is anticipated that EVs converted from internal combustion engine (ICE) vehicles may have problems complying with Standard No. 204 and some, if not all, of the other crashworthiness standards that contain the rigid barrier crash test procedure. The converted EVs are usually at least 10 percent heavier than the ICE vehicle from which they were derived. This is potentially significant because the weight increase may result in more overall deformation of the EV during the crash test. Increased overall frontal deformation would increase the likelihood that the requirements of Standard No. 204 would not be met. For EVs having difficulty meeting the requirements of this standard, NHTSA notes that the Vehicle Safety Act provides that a manufacturer may apply for a 2-year temporary exemption for up to 2,500 vehicles per year on the basis that an exemption would facilitate the development and field evaluation of low-emission motor vehicles.

The question for which the agency seeks comments is: should NHTSA consider seeking an amendment of the Vehicle Safety Act that would increase the number of vehicles that the exemption covers per year and would lengthen, from 2 years to 3 years, the maximum term allowed for exemptions greater on the basis of substantial economic hardship? These amendments might facilitate the production of these low-emission vehicles.

5. FMVSS No. 208, *Occupant Crash Protection.* Standard No. 208 places limits on the head, thorax, and leg impact responses of test dummies placed in front outboard seats during a 30 mph rigid barrier crash test. Many EVs that are designed and built as EVs (and not converted from ICE to electric propulsion) are small and light. There is concern that many such vehicles may have problems meeting the requirements of Standard No. 208 due to limited crash energy management capability. As previously stated, EVs converted from ICE vehicles may have problems complying with the standards that contain barrier crash test procedures because of the weight increase that often occurs as a result of the conversion. Previous studies of the suitability of the FMVSS for EVs have concluded that compliance with the barrier crash test standards may present problems, but is practicable and necessary for safety. There are few crash test data available on late model EVs with which to objectively assess the stability of those existing vehicles to meet the requirements of the barrier crash test standards. For EVs needing significant modifications to meet the requirements of Standard No. 208, use of the temporary exemption procedure as an interim measure might be appropriate.

The questions for which the agency seeks comment are:

(a) See the question under paragraph 5 above.

(b) If the number of exempted vehicles per year were increased for EVs, what would be the overall effect on the safety for occupants of these vehicles?

Post-Crash Standards

6. FMVSS No. 301, *Fuel System Integrity.* Standard No. 301 specifies requirements for the integrity of motor vehicle fuel systems by limiting fuel spillage and fuel spillage rates for vehicles after rollover, frontal barrier, and rear moving barrier tests. Since many EVs may contain combustion heaters with a tank and lines, the agency concluded in its previous studies of the suitability of the FMVSS for EVs that EVs should meet the requirements of Standard No. 301. The fire and explosion hazard that results from spilled fuel may be greater for EVs because of the large number of ignition

sources compared to ICE vehicles. As to battery liquids, although most electrolytes are not nearly as likely to ignite, they are generally highly corrosive and toxic.

The questions for which the agency seeks comment are:

(a) Should EVs comply with Standard No. 301 as it is presently written, or should it be modified for EVs? If Standard No. 301 should be amended for EVs, what should those modifications be?

(b) Should requirements similar to the fuel spillage and fuel spillage rate requirements of Standard No. 301 be adopted to regulate the spillage of liquid electrolyte?

B. New Standards To Address Potentially Unique Electric Vehicle Safety Hazards

New federal EV safety standards may be needed to address potential safety hazards associated with routine servicing of the vehicles, re-charging of the battery systems, and crashworthiness and crash avoidance problems. Routine service and re-charging safety hazards can result from the possibility of a malfunction of the propulsion system such as a short circuit. Unique crash avoidance safety hazards may result primarily from the operational characteristics of EVs. For example, most of the drive motors make very little noise compared to internal combustion engines. This may result in a safety hazard for pedestrians, particularly when an EV is backing up. Also, acceleration performance of some EVs, which has been poor in comparison to conventional vehicles, may cause these vehicles to pose a safety hazard when operating on limited access roads and while merging into high speed traffic. Crashworthiness safety hazards unique to EVs may be primarily associated with the possibility that battery system components, chemicals, and electrical energy may not be contained during a collision. DOE adopted several crash avoidance and crashworthiness safety regulations (10 CFR part 475) to address unique EV safety hazards. EVs purchased by DOE under its development and demonstration program mandated by Public Law 94-413, The Electric and Hybrid Vehicle Research, Development, and Demonstration Act, were required to comply with these regulations. The DOE safety regulations form the basis for several questions that this notice asks below.

1. New Standards To Address Safety Hazards Associated with Maintenance and Re-Charging

The questions for which the agency seeks comment are:

(a) Should NHTSA consider rulemaking that would standardize cables, connectors, receptacles, transformers, and procedures involved in the re-charging of the traction or propulsion battery systems? If so, have standards for these devices and procedures been adopted by the U.S. Military, Society of Automotive Engineers (SAE), American National Standard/Electronic Industries Association (ANSI), or any other organization that would adequately reduce the re-charging safety hazards and thus be suitable to serve as a basis for NHTSA rulemaking?

(b) Should a procedure be standardized through NHTSA rulemaking for disabling the main drive power circuitry during routine EV maintenance in order to minimize the danger of shock, explosion or fire being caused by carelessness or inexperience? If so, are there currently regulations in existence that effectively address this problem and thus would be suitable to serve as a basis for NHTSA rulemaking?

2. New Standards To Address Unique Crash Avoidance Safety Hazards

The questions for which the agency seeks comment are:

(a) Should NHTSA consider a requirement for an audible signal that operates when an EV's transmission is in reverse? Such a signal would increase the likelihood that any pedestrian in the vicinity of a backing EV is aware of the vehicle's movements.

(b) Should NHTSA consider rulemaking that would require battery vents to have flame barrier provisions to inhibit battery explosions?

(c) Should NHTSA develop a regulation to require venting of the battery compartment in order to minimize the safety hazards that may result from an accumulation of explosive gases?

(d) Should the agency consider developing a standard to require that EV's have a device that positively disconnects the battery and that is operable from the normal operator position?

(e) Should lower bound limits be placed on the accelerator and velocity performance of EVs to ensure that they have some minimum capability of operating in a traffic mix that includes conventional vehicles?

(f) Since some EVs may have a single speed transmission which would allow the vehicles to operate at the same speed in reverse as they do in forward, should NHTSA consider a regulation that places a limit on maximum reverse speed? If so, what should this speed be?

(g) For EVs with a single speed transmission (Standard No. 102 applies to multi-speed transmissions), should NHTSA consider a regulation to require these vehicles to have a braking effect at any speed less than 25 mph? If so, what should the deceleration rate be? Would the effects of regenerative braking, for vehicles so equipped, be enough to satisfy this requirement?

(h) Should the agency consider a regulation requiring EVs to have a warning device, located in the direct forward view of the driver, that operates in the event of an electrical malfunction in the propulsion system?

3. New Standards To Address Potentially Unique EV Crashworthiness Safety Hazards

The questions for which the agency seeks comment are:

(a) Should NHTSA consider issuing a standard to require that the electric propulsion circuit be electically isolated from the other conductive portions of the vehicle sufficiently to prevent injury due to a person's contacting any portion of the electric propulsion circuit while in contact with other portions of the vehicle?

(b) Should NHTSA require that EVs be capable of complying with the requirements of Standard No. 208, *Occupant Crash Protection*, and Standard No. 301, *Fuel System Integrity*, without battery material intruding into the vehicle's occupant compartment?

(c) Should NHTSA consider rulemaking to require that all battery materials remain outside the occupant compartment but inside the vehicle during a barrier crash test at a speed less than 30 mph? If so, what crash test speeds should be considered?

(d) Should NHTSA consider requirements to limit the spillage and spillage rate of liquid electrolytes during a barrier collision with requirements similar to the fuel spillage and fuel spillage rates specified in Standard No. 301, *Fuel System Integrity*?

(e) Should NHTSA consider requirements to limit exposure to battery elements that operate at temperatures in excess of a specified value. If so, what should the compliance test for such a requirement be?

(f) Should NHTSA consider developing a standard to require EVs to have a device which automatically disconnects the propulsion battery

circuitry in the event of a high energy crash?

Rulemaking Analyses

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

This advance notice of proposed rulemaking is not subject to Executive Order 12291.

However, the subject matter of the advance notice is considered "significant" under DOT's regulatory policies and procedures. The notice concerns a matter of substantial public interest. NHTSA believes that most, if not all, of the EVs being built for demonstration purposes incorporate features that address some or all of the potential safety problems discussed in this notice. The fact greatly reduces the potential cost of compliance with whatever standards NHTSA may ultimately adopt. Based on available information, the agency believes that the costs associated with various potential requirements discussed in this notice might not be significantly more than those now being incurred by manufacturers of existing electrically powered vehicles if no standards were developed. However, the impacts of this action can only be estimated with a significant degree of precision when the agency decides which, if any, of the various requirements will form the basis for a rule. Therefore, a full preliminary regulatory evaluation (PRE) for this notice has not been prepared. One of the purposes of this advance notice is to seek comments and information from the public on the costs, benefits, and feasibility of the various options and thus provide the basis for a more definitive evaluation at the next stage of this proceeding.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 "Federalism" and it has been determined that the advance notice does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

The agency will review proposals for rulemaking that arise from this advance notice to determine whether they would have a significant effect upon the environment for the purposes of the National Environmental Policy Act.

Regulatory Flexibility Act

Review of this advance notice under the Regulatory Flexibility Act is not required because the Act does not apply to an advance notice of proposed rulemaking. Should the agency decide to proceed with a notice of proposed rulemaking, review of that notice under the Regulatory Flexibility Act will be made at that time

Comments

NHTSA solicits public comments on this notice. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length, 49 CFR 553.21. Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a letter setting forth the information specified in the agency's confidential business information regulation, 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on the notice will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date and it is recommended that interested persons continue to examine the docket material.

Those persons desiring to be notified upon receiprt of their comments in the docket should enclose a self addressed stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

A regulatory information number (RIN) is assigned to each regulatory action listed in the United Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

Authority: 15 U.S.C. 1392, 1401, 1407; delegations of authority at 49 CFR 1.50 and 501.8.

Issued: December 23, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-30965 Filed 12-26-91; 8:45 am]

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49 CFR Parts 571 and 572

[Docket No. 88-07; Notice 4]

RIN 2127-AD73

Anthropomorphic Test Dummy; Side Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: In October 1990, NHTSA amended Standard No. 214, *Side Door Strength,* to add procedures and performance requirements for a new dynamic test. In the test, a passenger car must provide protection to the thoracic and pelvic regions of a specified side impact dummy (SID) in a full-scale crash test. NHTSA indicated at the time of the side impact final rule that if ongoing studies demonstrated that two alternative dummies, BioSID and/or EuroSID, compared satisfactorily to SID, it would consider proposing those dummies as alternative devices in the future. NHTSA is issuing this ANPRM to request comments on the desirability and need for specifying alternative dummies in Standard No. 214, and to obtain relevant technical data which could be used to support development of a possible NPRM.

DATES: Comments must be received on or before March 12, 1992.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted (preferably in 10 copies) to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. To 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Stan Backaitis, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-4912).

SUPPLEMENTARY INFORMATION:

Background

On October 30, 1990, NHTSA published in the **Federal Register** (55 FR 45765) a final rule which amended Standard No. 214, *Side Door Strength*, to add procedures and performance requirements for a new dynamic test. In the test, a passenger car must provide protection to the thoracic and pelvic regions of a specified side impact dummy (SID) in a full-scale crash test in which the car (known as the "target" car) is struck in the side by a moving deformable barrier simulating another vehicle. The new requirements are phased-in by an annually increasing percentage of each manufacturing's production beginning on September 1, 1993, with full implementation effective September 1, 1996.

The test procedure includes placing anthropomorphic test dummies in the outboard front and rear seats of the target car. For the thorax, the performance limit is expressed in terms of an injury criterion known as the Thoracic Trauma Index (dummy) or TTI(d). This injury criterion represents the average of peak acceleration values measured on the lower spine and the greater of the acceleration values of the upper and lower ribs of the tests dummy. For the pelvis, the performance limit is specified in terms of the peak acceleration measured on the pelvis of the test dummy.

The October 1990 final rule was the culmination of more than a decade of research by the agency, beginning in the late 1970's. One of the major projects of that research was developing a side impact dummy (SID) that would be an appropriate human surrogate for measuring injury risk in a side impact. The agency considered whether the human injury risk of the particular impact situation could be determined from measurement of responses obtained from SID, and whether those specific responses possess biofidelity of response with human beings. The term "biofidelity" refers to how well a test dummy duplicates the responses of a human being in an impact.

TTI(d) and pelvic acceleration were developed by the agency, using cadaver tests, as empirical criteria for measuring injury risk in side impacts. The bases for these injury criteria are fully discussed in the October 1990 final rule amending Standard No. 214, TTI(d) and pelvic acceleration predict the probability of differing levels of thoracic injury and pelvic fracture, respectively, that a person would experience in a real-world crash. It should be noted that the two injury criteria do not address all types of injuries in a side impact. For example, they do not address head injuries or some types of abdominal injuries.

In order for SID, or any other test dummy, to be considered an appropriate human surrogate for measuring TTI(d) and pelvic acceleration in the side test procedure, the TTI(d) and pelvic acceleration measurements obtained from the dummy must be correlated to those which would be obtained if a human being were subjected to the same impact conditions. In developing SID, NHTSA examined the biofidelity of the SID's thorax and pelvic acceleration responses by a number of means, including simulated vehicle crash tests. The agency also carefully considered the durability and reliability of SID, its repeatability and reproducibility, and other factors to ensure its appropriateness for use in the standard No. 214 dynamic test. The basis for adopting SID is fully discussed in a companion final rule to the Standard No. 214 amendment, also published in the **Federal Register** (55 FR 45757) on October 30, 1990.

As part of its side impact rulemaking, NHTSA considered two alternative dummies to SID, EuroSID and BioSID. The EuroSID dummy was developed by a group of European research organizations under the auspices of the European Experimental Vehicles Committee (EEVC). The first EuroSID prototype dummy was completed in 1986. General Motors (GM) developed the BioSID dummy, in cooperation with the Society of Automotive Engineers. The first BioSID prototype dummy was completed in 1989.

In specifying the use of SID in the side impact final rule, NHTSA recognized that both BioSID and EuroSID have potential advantages over SID to the extent that they can provide considerably more measurements to assess injuries in side impact crashes than those available on SID. The agency also recognized that specification of EuroSID might help promote international harmonization. However, BioSID and EuroSID were still under development at the time of the side impact final rule, and NHTSA did not believe that the potential advantages of those dummies should lead to a delay in the rulemaking. The SID dummy was ready at the time of the final rule, and the agency concluded that a final rule specifying SID could result in significant safety benefits.

Purpoe of ANPRM

NHTSA indicated at the time of the side impact final rule that if ongoing studies demonstrated that BioSID and/or EuroSID compared satisfactorily to SID, it would consider proposing those dummies as alternative devices in the future. NHTSA is issuing this notice to request comments on the desirability and need for specifying alternative dummies in Standard No. 214, and to obtain relevant technical data which could be used to support development of a possible NPRM.

Alternative Test Dummies

The BioSID and EuroSID dummies were designed to meet different biomechanical response corridors than the SID. While the SID was designed to ensure biofidelity with respect to TTI(d) and pelvic acceleration only, the other dummies were designed to more extensive biomechanical response corridors developed by the International Standards Organization (ISO). NHTSA notes that while BioSID and EuroSID were not designed to the biomechanical response corridors of SID, initial evaluations of BioSID and EuroSID indicate acceptable biofidelity with respect to TTI(d) and pelvic acceleration. See Chapter IIIB of the agency's Final Regulatory Impact Analysis for the October 1990 final rule.

Based on a combination of pendulum, body-drop and sled tests, the ISO has defined biomechanical response corridors for the thorax, spine, pelvis, head, neck, chest displacement, shoulder and abdomen. Since BioSID and EuroSID are designed to have biofidelity in a larger number of areas, and provide for considerably more measurements to assess injuries in side impact crashes than those available on SID, they offer possible advantages for research purposes or for assessing aspects of a vehicle's side impact performance not currently addressed by Standard No. 214.

NHTSA and others have conducted considerable research concerning BioSID and EuroSID. In January 1990, in order to make an initial assessment of the suitability of these dummies for impact testing and to establish whether they can distinguish different impact environments, NHTSA conducted sled tests in which the dummies impacted flat walls which were padded with foams of various degrees of stiffness. The same tests were also conducted using SID. The BioSID and EuroSID produced acceleration responses having the same directional trends as the SID. There was very little difference between the three dummies in the choice of an optimal padding, the typical environment expected in future passenger cars. The differences in responses became progressively larger as the dummies impacted increasingly softer and harder surfaces.

NHTSA discontinued tests with EuroSID after discovery of certain mechanical and functional shortcomings. For example, the ribs were bottoming out, i.e., reaching maximum deflection capability, in the sled tests, which may have invalidated deflection measurements. Also, the EuroSID specifications have changed since NHTSA tested the prototype.

EEVC is conducting a new test program of EuroSID which was scheduled for completion during the summer of 1991. NHTSA understands the EEVC will make the test data publicly available as soon as possible. Once NHTSA receives the test data from EEVC, it will place the information in the docket.

During 1990, NHTSA conducted a number of additional tests using BioSID. The tests evaluated repeatability, reproducibility, and durability. The agency also conducted five vehicle crash tests. Also during 1990, the Motor Vehicle Manufacturers Association (MVMA) conducted a comparative evaluation of BioSID and SID in a series of 12 vehicle crash tests. The MVMA tests are reported in the following paper: K. L. Campbell, R. J. Wasko, S. E. Hensen, "Analysis of Side Impact Test Data Comparing SID and BioSID," SAE 902319, Proceedings, 34th Stapp Conference, SAE, Warrendale, PA, November 1990.

The BioSID tested by NHTSA appeared to have adequate repeatability of TTI(d) and pelvic acceleration impact responses and, for two dummies tested, acceptable reproducibility. The BioSID also appeared to have adequate durability. NHTSA notes, however, that its BioSID test experience was limited to only two dummies.

While the BioSID appeared to be a relatively consistent test tool during sled tests, NHTSA has some concerns about the results of its and MVMA's vehicle crash tests. In at least one of the five NHTSA tests, the data trace contains unusually high rib impact acceleration. The acceleration was considerably above the mean range of comparable responses measured in other vehicles under the same test conditions and appeared inconsistent with spine acceleration measurements. A similar such high impact response occurred during the MVMA tests. NHTSA has, to date, been unable to explain the causes for the high rib impact responses in those tests.

The results of NHTSA's research on EuroSID and BioSID are set forth in a six-volume research report entitled "Evaluation of the BioSID and EuroSID." The report will be made available for public inspection in the agency's Technical Reference Division. The agency notes that only the first volume of the six-volume report contains data on the EuroSID. NHTSA could not complete further tests with the EuroSID due to the dummy's functional limitations discussed previously. However, the EEVC is continuing the test program with the upgraded EuroSID (EuroSID I). The EEVC data from those tests will be made available to the public as soon as they are received by NHTSA. Other information concerning EuroSID and BioSID has been placed in dockets 79–04, 88–06 and 88–07.

Possible Specification of EuroSID and BioSID in Standard No. 214

The possible specification of alternative dummies to SID in Standard No. 214 raises a number of issues. Since EuroSID and BioSID allow assessment of more types of potential injuries than SID, there could be safety advantages if manufacturers design their vehicles using one of those dummies. Moreover, permitting the use of EuroSID might promote international harmonization.

There are, however, possible disadvantages in permitting multiple dummies. Some of these are illustrated by the agency's experience in specifying the use of two alternative dummies in Standard No. 208, *Occupant Crash Protection*. Based on that experience, NHTSA is planning to propose specifying the exclusive use of one dummy in that standard.

Standard No. 208 originally specified only one test dummy, the Hybrid II dummy. The agency later allowed use of a newer, more advanced test dummy, the Hybrid III dummy. See 51 FR 26688; July 25, 1986. This dummy has the capability of monitoring almost four times as many injury-indicating parameters as the Hybrid II dummy.

In deciding to permit use of the Hybrid III dummy, the agency found that the two types of dummies were essentially equivalent, i.e., when both types of test dummies were tested in vehicles, only minimal differences in test results were shown between the two types of dummies. The importance of equivalence is that vehicles which pass or fail Standard No. 208 using one type of dummy will achieve essentially the same result using the other type of dummy. Based on this finding of equivalence, the agency permitted the manufacturers to specify either type of dummy for Standard No. 208 compliance testing.

There are, however, slight differences in test results using the two equivalent dummies. In practice, these slight differences may affect the compliance test results in marginal cases. For instances, a manufacturer may have used one or the other dummy type for its certification and advised the agency to use that same dummy tape in the agency's compliance testing. However, if the agency obtains a marginal noncompliance for the vehicle using this test dummy, the manufacturer may conduct a subsequent test of the same vehicle with the other dummy type. Assuming that the vehicle passes using the other dummy type, the manufacturer can then inform the agency that it has changed its mind and now wishes to certify the vehicle with this different dummy type. In this case, the agency would have to conduct repetitive crash testing with the other type of test dummy for that vehicle. The repetitive testing represents an unnecessary expenditure of agency resources (both funds and staff time).

This source of potential variability and repetitive testing is eliminated by simply specifying one particular type of test dummy. For this reason, the agency believes that Standard No. 214 should ultimately specify only one dummy. It may, however, be appropriate to specify more than one test dummy in Standard No. 214 for an interim period.

NHTSA notes that, in requesting comments on alternative dummies, it is not at this time contemplating changing the existing injury criteria specified in Standard No. 214, i.e., TTI(d) and pelvic acceleration, nor is it contemplating major changes in the specified test procedure, such as going from full scale vehicle tests to a composite test procedure. The agency is also not contemplating any changes to the SID dummy. The agency therefore requests that commenters address the issue of alternative dummies in the context of the existing injury criteria and test procedure.

In order to obtain comments on the desirability and need for specifying alternative dummies in Standard No. 214, and to obtain relevant technical data which could be used to support development of a possible NPRM, NHTSA is requesting comments and data from interested persons. To aid the agency in obtaining useful comments, this notice asks a number of questions and makes a number of requests for data. Fro easy reference, the questions or requests are numbered consecutively throughout the document. Commenters need not limit themselves to addressing the specific questions asked in this notice but are instead encouraged to address in addition any issues that NHTSA should consider in regard to permitting the use of alternative dummies in Standard No. 214.

In proving a comment on a particular matter or in responding to a particular question, interested persons are requested to provide any relevant factual information to support their conclusions or options, including but not limited to test data, statistical and cost data, and the source of such information.

A. Desirability of Specifying Alternative Dummies

1. Is there a need to specify alternative dummies in Standard No. 214, given the availability of SID for side impact protection assessment?

2. What benefits could be obtained by specifying one or more alternative dummies?

3. If manufacturers had the option of using alternative dummies to SID for certifying compliance with Standard No. 214, would they use them? If so, which one and for what purposes? Would they use the dummies to assess the potential for types of injuries not addressed by Standard No. 214?

4. Assuming that one of the major benefits of specifying alternative dummies is that manufacturers could design their vehicles in light of supplemental injury measurements not covered by Standard No. 214, should the agency consider specifying additional requirements, based on such measurements, in Standard No. 214? If not, would the manufacturers use those supplemental measurements in the absence of requirements? If the agency should consider such requirements, what requirements should be considered, and why? Which of the two alternative dummies is capable of making the necessary measurements for such requirements? Should any additional injury indicating measurements, if proposed, be time limited and/or excluded, such as the data after barrier separation? In answering this question, please provide any available data that would support specification of additional requirements, including the biomechanical basis for the injury criteria and estimates of benefits.

5. What problems could result from specification of multiple dummies in Standard No. 214? What are the legal, design, competitive, and cost implications? Would manufacturers attempt to ensure that their vehicles complied with the standard using each of the dummies? Assuming that there would be at least some differences in the measurements obtained by different dummies, would manufacturers choose for particular models the dummy which gives the most favorable test results?

6. To what extent would specifying alternative dummies promote international harmonization? Which of the dummies would promote international harmonization? What would have to be done by NHTSA/other regulatory authorities to achieve harmonization in this area?

7. Is NHTSA correct in its view that Standard No. 214 should ultimately specify only one dummy? If so, should the single dummy specified for some future time be other than SID? What approach should the agency follow in reaching that result? Should the agency permit multiple dummies for a specified period of time, and specify a single dummy at the end of that time? Taking into account consideration of vehicle leadtimes, how long a transition period should be provided? What single dummy should ultimately be specified? What specific problems might result if manufacturers found it necessary to use multiple alternative dummies during the transition period?

8. Both BioSID and EuroSID are more complicated than SID and involve higher costs. How should higher costs be considered in deciding whether to permit the use of these dummies, and in deciding whether to ultimately specify the sole use of one of these dummies? Please provide estimates of the costs associated with BioSID and EuroSID, including calibration and maintenance costs, and of any product cost increases that would be associated with use of these alternative test dummies.

B. Adequacy of EuroSID and BioSID

9. How adequate are EuroSID and BioSID for assessing TTI(d) and pelvic acceleration?

10. How should NHTSA assess the biofidelity, with respect to TTI(d) and pelvic acceleration, of EuroSID and BioSID? Would the SID biomechanical response corridors represent a sufficient assessment? Should any or all of the ISO biomechanical response corridors be used to assess biofidelity?

11. How should NHTSA assess the repeatability, reproducibility and reliability of EuroSID and BioSID? What information/data are available in these areas? Are the pendulum and sled impact severity ranges specified in the BioSID documentation adequate?

12. How adequate are EuroSID and BioSID for assessing the potential for injuries other than those addressed by TTI(d) and pelvic acceleration? In answering this question, please address biofidelity, repeatability, reproducibility and reliability, and indicate what information/data are available in these areas. Is it important for BioSID and EuroSID to have biofidelity for injury measurements not covered by Standard No. 214's requirements?

13. What experiences have users had with BioSID and EuroSID? Have users been satisfied with the mechanical and measurement integrity of the dummies in the Standard No. 214 test environment? Have any problems occurred with these dummies? In answering this question, please discuss how many dummies have been used and in what test environments.

14. Is the response of any one dummy more sensitive to positional placement and/or adjustment in a given seating position? If so, please identify the position for each dummy and also the measurement or the set of measurements that contribute to the sensitivity. Is the response of any one dummy particularly insensitive or sensitive to protrusions into the passenger compartment and their locations? If so, what set of measurements are affected and what are the injury criteria implications? What are the impact response and kinematic sensitivities of EuroSID and BioSID in off-axis (off-lateral) impacts? Is there evidence of changes in response due to binding, friction, or differences in inertial properties and, if so, how significant are they in the assessment of injury potential?

15. Repeated exposures to impact sometimes cause shifts in responses due to component deterioration. Have users of alternative dummies identified any components which have caused instability of impact responses? If so, please indicate the components and provide supporting data.

16. Please provide estimates on the durability of BioSID and EuroSID and the frequency of expected component replacements.

17. The pelvic "H" point plug in the BioSID dummy requires replacement after every impact. Does this cause any problems?

18. The BioSID specifications require dummy operation at a considerably narrower temperature range than SID. Please discuss whether the narrower temperature operating environment would create any problems for users.

19. If BioSID or EuroSID were specified as the sole dummy for use in Standard No. 214, would there be any sourcing problems?

C. Equivalence of EuroSID and BioSID to SID

20. How should NHTSA assess the equivalence of EuroSID and BioSID to SID, i.e., the extent to which the test results obtained using these alternative dummies are the same as obtained when

using SID? Can equivalence be assessed using sled tests only? What ranges of impact speeds and padding stiffness should be used in such tests? Should vehicle crash tests also be used in assessing equivalency?

21. If BioSID and/or EuroSID produce different TTI(d) or pelvic acceleration measurements than SID, is it still possible to establish equivalence? Could transfer functions be developed to normalize the responses of alternative dummies to the SID response level? If so, please discuss the rationale, procedures and data that would be needed for such development. Alternatively, should the agency consider different performance levels for different dummies?

D. Other Issues

22. If NHTSA decided to permit use of BioSID and/or EuroSID, what injury assessment sensors, in addition to those provided on SID, should the dummies incorporate?

23. What calibration requirements should the agency consider for BioSID and EuroSID? Should calibrations be limited to the lateral direction or should other impact directions be considered? Please provide recommendations for other calibration requirements, including specified impact and direction, and supporting rationale.

Potential Regulatory Impacts

NHTSA has considered the potential burdens and benefits associated with specifying alternative test dummies in Standard No. 214. This ANPRM is not subject to Executive Order 12291. However, NHTSA believes that this advance notice is a "significant" rulemaking action under the Department of Transportation regulatory policies and procedures, since it concerns a matter in which there is substantial public interest.

The agency believes that the economic and other effects of specifying alternative test dummies in Standard No. 214 would be minimal. This belief is based on the assumption that the agency could make a finding of equivalence between the alternative dummies and SID. If the agency should specify the sole use of a different dummy than SID, it would provide sufficient leadtime to enable manufacturers to incorporate use of the new dummy in their normal design cycles. While BioSID and EuroSID would likely involve somewhat higher costs than SID, the costs associated with dummies are a very small part of the overall costs associated with the side impact dynamic requirements. The agency has determined that the cost impacts associated with this rulemaking action are so minimal that a full regulatory evaluation is not required.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Public Comments

NHTSA solicits public comments on this notice. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the advance proposal will be considered. To the extent possible, comments filed after the closing date will also be considered. Comments on the advance proposal will be available for inspection in the docket.

The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date. It is therefore recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

(15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR 1.50).

Issued: December 23, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-30964 Filed 12-26-91; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB73

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Giant Garter Snake

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list the giant garter snake (*Thamnophis gigas*) as an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). This snake inhabits localized wetland habitats in portions of the Central Valley of California. The species is endangered by habitat loss caused by numerous factors, primarily urbanization, agricultural, and flood control activities. This proposal, if made final, would extend the Act's protective provisions to this animal. The service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by February 25, 1992. Public hearing requests must be received by February 10, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, room E-1803, Sacramento, California 95825-1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Peter Sorensen (see **ADDRESSES** section) at 916/978-4866 or FTS 460-4866.

SUPPLEMENTARY INFORMATION:

Background

The giant garter snake (*Thamnophis gigas*) is one of the largest garter snakes, reaching a total length of at least 140 centimeters (cm) (55 inches (in)) (Van Denburgh 1922). Females are slightly longer and proportionately heavier (typically 500–700 grams (g)) (1.0–1.4 pounds (lb)) than males (George Hansen, independent researcher, pers. comm., 1991). Dorsal background coloration is brownish with a checkered pattern of black spots, separated be a yellow dorsal stripe and two light colored lateral stripes. Prominence of the three yellow strips is geographically variable. First described by Fitch (1940) as a subspecies of the northwestern garter snake (*Thamnophis ordinoides gigas*), the status of the giant garter snake, along with the of other western garter snakes, has undergone several taxonomic revisions including its placement as a subspecies of the western terrestrial garter snake (*Thamnophis elegans*) (Johnson 1947, Fox 1951), and then the western aquatic garter snake (*Thamnophis couchii*) (Fox and Dessauer 1965, Lawson and Dessauer 1979). In 1987, it was accorded the status of a full species, (*Thamnophis gigas*) (Rossman and Stewart 1987).

Endemic to valley floor wetlands in the Sacramento and San Joaquin valleys of California, the giant garter snake inhabits sloughs, ponds, small lakes, low gradient streams, and other waterways, such as irrigation and drainage canals, where it feeds primarily on small fishes and frogs. Habitat requisites consist of (1) adequate water during the snake's active season (early-spring through mid-fall) to provide food and cover, (2) emergent, herbaceous wetland vegetation, such as cattails and bulrushes, for escape cover and foraging habitat during the active season, (3) grassy banks and openings in waterside vegetation for basking, and (4) higher elevation uplands for cover and refuge from flood waters during the snake's dormant season in the winter (California Department of Fish and Game (CDFG), unpubl. data). Giant garter snakes typically are absent from larger rivers and other water bodies that support large, predatory fish, and from wetlands with sand, gravel, or rock substrates (*ibid.*). Riparian woodlands with excessive shade do not provide suitable habitat because of the lack of basking sites and/or prey populations.

The giant garter snake inhabits small mammal burrows above prevailing flood elevations throughout its winter dormancy period (November to mid-March). Giant garter snakes typically select burrows with sunny aspects (along south and west facing slopes). Upon emergence, males immediately begin wandering in search of mates (George Hansen, pers. comm., 1991). The breeding season extends through March and April, and females give birth to live young from late July through early September (*ibid.*). Clutch size is variable, ranging from 10 to 46 young (*ibid.*). At birth, young average about 25 cm (10 in) and 3–5 g (0.1–0.18 ounces (oz)). Upon birth, young immediately scatter in search of food. In rice growing regions, young snakes are found more commonly in rice fields than in adjoining irrigation and drainage canals (*ibid.*). Although growth rates are variable, young typically more than double in size by 1 year of age (*ibid*). Sexual maturity averages 3 years of age in males and 5 years for females (*ibid.*).

Fitch (1940) described the historical range of the species as extending from the vicinity of Sacramento and Contra Costa Counties southward to Buena Vista Lake, near Bakersfield in Kern County. Prior to 1970, the giant garter snake was recorded historically from only 16 localities (Hansen and Brode 1980). With five of these localities clustered in and around Los Banos, Merced County, the paucity of early records makes it difficult to determine precisely the species' former range. Nonetheless, these records coincide with the historical distribution of wetland habitats. Reclamation of wetlands for agricultural and other purposes has extirpated the species from the southern portion of its range, including the former Buena Vista Lake and Kern Lake in Kern County, and probably also the historic Tulare Lake and other wetlands in Kings and Tulare Counties.

The current range of the giant garter snake extends from near Burrell, Fresno County, northward to the vicinity of Gridley, Butte County, (Hansen and Brode 1980). Unpublished studies sponsored by the California Department of Fish and Game indicate that giant garter snake populations currently are distributed in the rice production zones of Sacramento, Sutter, Butte, Colusa, and Glenn Counties; within portions of the Yolo Bypass and Putah Creek in Yolo County; along the eastern fringes of the Sacramento-San Joaquin River delta from the Laguna Creek-Elk Grove region of central Sacramento County southward to the Stockton area of San Joaquin County; in the north and south Grasslands district of Merced County; and in the Mendota area of Fresno County.

Within these regions, giant garter snake populations occur discontinuously in isolated patches of valley floor habitat, often in association with agricultural water delivery and drainage facilities. Extant populations are clustered in 11 areas, geographically and genetically isolated from one another (CDFG, unpubl. information). The species has been extirpated from 5 of the 16 localities known to exist prior to 1970. The 11 extant population clusters largely coincide with historical riverine flood basins throughout the Central Valley. Some of these clusters consist of numerous subpopulations, whereas others are limited to as few as one or two populations. The degree of genetic interchange within each of these 11 clusters is variable, depending on the number and quality of movement corridors connecting the constituent populations. Although other undiscovered populations probably remain, some of the known populations within these clusters probably have disappeared since their discovery (*ibid.*). Most known giant garter snake populations appear to support few individuals due to limited extent and quality of habitat (*ibid*).

The species appears absent from most or all of the northern portion of the San Joaquin Valley, where the floodplain of the San Joaquin River is restricted to a relatively narrow trough by alluvium from tributary rivers and streams. This apparent 100 kilometer (km) (62 mile (mi)) gap in its distribution separates populations in Merced County from those along the eastern fringes in the Sacramento-San Joaquin River delta (the Delta) in San Joaquin County (Hansen and Brode 1980). Suitable habitat for the giant garter snake has been eliminated from essentially all of the Delta (CDFG, unpubl. data).

On September 18, 1985, the Service published the Vertebrate Wildlife Notice of Review (50 FR 37958), which included the giant garter snake as a category 2 candidate species for possible future listing as threatened or endangered. Category 2 candidates are those species for which information contained in Service files indicates that proposing to list is possibly appropriate but additional data is needed to support a listing proposal. In the January 6, 1989, Animal Notice of Review (54 FR 554), the Service again included the giant garter snake as a category 2 candidate, soliciting information on the status of this species. On September 12, 1990, the California-Nevada Chapter of the American Fisheries Society petitioned the Service to list the giant garter snake as an endangered species. The Service published a 90-day petition finding on March 22, 1991 (56 FR 12146), which

concluded that the petition presented substantial information indicating that listing may be warranted. The decision to propose this species for listing is based on information contained in the petition, referenced in the petition, and otherwise available to the Service. This proposal constitutes the final finding on the petitioned action.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists of threatened and endangered species. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the giant garter snake (*Thamnophis gigas*) (Fitch) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Examination of the historical localities from which giant garter snakes were recorded and the historic losses of wetland habitats throughout the Central Valley indicates that the current distribution and abundance of the species is much reduced from former times. As discussed above, agricultural and flood control activities have extirpated the giant garter snake from the southern one third of its range in former wetlands associated with the historic Buena Vista, Tulare, and Kern lakebeds. These lakebeds once provided the largest single block of wetland habitat in California. These shallow lakes, typically less than 12 meters (m) (40 feet (ft)) deep, supported vast expanses of ideal giant garter snake habitat, consisting of cattail and bulrush dominated marshes. Tulare and Buena Vista lakebeds alone covered over 2,000 square km (over 800 square mi) indicating that suitable habitat was prevalent over much of the San Joaquin Valley (San Joaquin Valley Drainage Program 1990).

Vast expanses of bulrush and cattail floodplain habitat also typified much of the Sacramento Valley historically (Hinds 1952). Prior to reclamation activities beginning in the mid to late 1800's, about 60 percent of the Sacramento Valley was subject to seasonal overflow flooding in broad, shallow flood basins that provided expansive areas of giant garter snake habitat (*ibid.*).

Several other studies on the historical and current extent of wetlands in the Central Valley shed additional light on the extent of decline in giant garter snake habitat. Of the estimated 1.6 million hectares (ha) (4.0 million acres (ac)) of wetlands originally present throughout the Central Valley, about 101,175 to 153,300 ha (250,000 to 378,800 ac) (6 to 9 percent) currently remain (Jones and Stokes Associates 1987, U.S. Fish and Wildlife Service (USFWS) 1989). Because much of the current wetland acreage consists of artificial habitats (e.g., managed duck hunting clubs, irrigation drainwater evaporation ponds), the loss of natural wetland communities probably exceeds 99 percent (Jones and Stokes Associates 1987). About 36,000 ha (88,963 ac) support emergent vegetation suitable for the giant garter snake (Kempka and Kollasch 1990). Field studies indicate, however, that giant garter snakes are absent from most areas with seemingly suitable habitat (CDFG, unpubl. data). This may be a result of habitat fragmentation and/or the presence of predatory fish. Therefore, only a small percentage of extant wetlands provides habitat for the giant garter snake.

A number of land use practices and other human activities currently threaten the survival of the giant garter snake throughout its range. Although some giant garter snake populations have survived in artificial habitats created by agricultural and flood control activities, many of these altered wetlands are now threatened with rapid urban development. Within the range of the species, development of several new cities are proposed, including three in San Joaquin County, one in Stanislaus County, and one in Sutter County. Numerous other expansions of existing cities are proposed as well (see below). Although the potential impact of these new and expanded cities on the giant garter snake is unknown at this time because environmental studies are as yet incomplete, these project proposals occur in areas of known or potential habitat.

The largest extant population inhabits extensive agricultural lands in the American Basin, a large flood basin at the confluence of the Sacramento and American Rivers, in Sacramento and Sutter Counties. Throughout this area, reconnaissance level surveys (USFWS 1991) indicate that about 570 ha (1,400 ac) of giant garter snake habitat exist in the form of man-made irrigation channels and drainage ditches, as well as an undetermined acreage of suitable habitat within nearly 5,260 ha (13,000 ac) of adjoining rice fields. The giant garter snake also uses an undetermined amount of habitat at higher elevations to escape from winter flooding during the inactive winter phases of the snake's like cycle. The U.S. Army Corps of Engineers (Corps) and local project sponsors are proposing a minimum of 400-year flood protection for this 22,260 ha (55,000 ac) agricultural area, as part of its American River Watershed Investigation. The U.S. Fish and Wildlife Service (USFWS 1991) anticipates that this flood control proposal would result in the conversion of most or all of this area to urban land uses within the next 50 years. Absent adequate mitigation, this project could extirpate the giant garter snake from the American Basin (CDFG, unpubl. information).

Other future and ongoing activities throughout the American Basin also may adversely impact the species. These include the North Natomas Community Drainage System, proposed by the City of Sacramento, which could eliminate or degrade about 42 km (26 miles) of giant garter snake habitat along existing canals and ditches, and additional rice field habitat (CDFG, unpubl. information). Potential effectiveness of a proposed mitigation plan remains undetermined. Although at the conceptual planning stage, the proposed Sutter Bay project at the north end of the American Basin could eliminate or degrade about 68 km (42 miles) of giant garter snake habitat associated with existing agricultural land (*ibid*). The proposed South Sutter Industrial Center, located near the Sutter Bay project, could eliminate another 14.5 km (9.0 miles) of aquatic habitat. The Sacramento Metropolitan Airport is proposing about 777 ha (1,920 ac) of development on agricultural and vacant lands that potentially could result in major adverse impacts to the species, including the loss of about 14.5 km (9.0 miles) of canal habitat and 607 ha (1,500 ac) of rice fields, as well as the disruption of movement corridors (*ibid*). Any highway improvement or construction projects, or the planned extension of the Sacramento Regional Transit system in this area, also increases the likelihood for major impacts to the species, including elevated mortality from increased traffic on local roads and highways.

In West Sacramento, Yolo County, local governments and the Corps are proposing the Sacramento Metropolitan Area Investigation, a 400-year flood protection project for over 3,240 ha (8,000 ac) of agricultural lands (USFWS, unpubl. information). As in the American Basin, improved flood protection would enable urban development to occur in agricultural lands throughout the 100-year life of the project. Within the study area, an

estimated 45 km (28 miles) of small waterway habitat potentially inhabited by the giant garter snake would be threatened.

In the Laguna Creek-Elk Grove region of Sacramento County, residential developments and associated stream channelization and road improvement projects pose a severe threat to the few populations known to still survive in this region. These proposed and ongoing projects, sponsored by private interests and local governments, include 11 residential developments. Other proposals in Sacramento County that could adversely affect the giant garter snake include the closure of Mather Air Force Base; the North Delta Water Management Project, proposed by the California Department of Water Resources; and other residential developments.

Elsewhere, numerous other proposed or ongoing projects could adversely affect the giant garter snake. These include new and expanded residential developments in six counties, and wastewater treatment plant expansions, landfill expansions, water development projects, drainwater conveyance projects, and flood control projects in the San Joaquin Valley.

Ongoing maintenance of aquatic habitats for flood control and agricultural purposes poses additional threats to the giant garter snake throughout its range. Local agencies routinely control vegetative cover along canal banks and stream courses to maintain water conveyance capabilities. These activities eliminate or prevent the establishment of habitat characteristics required by this cover dependent species. Because many giant garter snake populations currently are restricted to such artificially created and maintained habitats, these vegetation control activities fragment and isolate available habitat, and prevent dispersal of snakes among habitat units.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Although giant garter snakes do not seem to be particularly popular among reptile collectors, the species has been found for sale in pet shops (John Brode, CDFG, pers. comm., 1991). Federal listing could raise the value of the giant garter snake within reptilian trade markets and increase the threat of unauthorized collection above current levels. Even limited interest in the species among collectors could pose a serious threat to smaller populations that contain few individuals.

C. Disease or Predation

The real or potential impact of disease on the giant garter snake is unknown. However, contamination of irrigation and drainage canals with agricultural and urban pollutants could affect the health of resident giant garter snakes. Less healthy individuals may be more prone to disease and infection.

A number of native mammals and birds are known or likely predators of giant garter snakes, including raccoons, skunks, opossums, foxes, hawks, egrets, and herons. Giant garter snakes of all sizes commonly are found scarred or injured, apparently from attacks by herons and egrets (George Hansen, pers. comm., 1991). In general, giant garter snakes have adapted physically and behaviorally to withstand predation levels from these animals. However, in situations where giant garter snake habitats have become fragmented, isolated, and otherwise impacted by human activities, increased predatory pressure may become excessive, especially where alien species, such as rats and feral and domestic house cats and dogs are introduced. These additional threats likely become particularly acute where urban development immediately abuts giant garter snake habitat. Although the actual impact of predation under such situations has not been studied, the likelihood for serious impact exists.

To date, studies indicate that the giant garter snake is typically absent from waters supporting large predatory fishes. Although most adult giant garter snakes are too large to represent suitably sized prey items for large fish, subadult snakes undoubtedly sustain mortality rates high enough to prevent sustainable populations. The artificial introduction of such alien game fish species as striped bass, largemouth bass, sunfish, crappie, and various catfish species, combined with the elimination of suitable shoreline vegetative cover from stream channelization and levee construction projects, may have contributed to the elimination of the giant garter snake from many areas throughout its former range, particularly in the Sacramento-San Joaquin River delta.

D. The Inadequacy of Existing Regulatory Mechanisms

The primary cause of the decline in giant garter snake numbers is believed to be the loss of habitat from human activities. Federal, State, and local laws and regulations have not proven adequate to arrest the historical and ongoing losses of giant garter snake habitat.

The National Environmental Policy Act and section 404 of the Clean Water Act represent the primary Federal laws that could afford some protection for the giant garter snake. These laws, however, do not protect candidate species *per se*. Nationwide Permit Number 26 (33 CFR part 330.5(a)(26)) was established by the Corps to facilitate issuance of permits for discharges of fill material into wetlands up to 4.0 ha (10 ac). For project proposals falling under Nationwide Permit 26, the Corps has been reluctant to withhold authorization unless a listed threatened or endangered species is known to be present, regardless of the significance of other wetland resources. Candidate species receive no special consideration. This situation may be attributable in part to the absence of any requirement to assess cumulative impacts of implementing this regulation on wetlands and candidate species such as the giant garter snake.

Pursuant to 33 CFR 323.4, the Corps also has promulgated regulations that exempt various farming, forestry, and maintenance activities from the regulatory requirements of section 404. Based on past jurisdictional determinations conducted by the Corps, many of the irrigation and drain water canals, and other agricultural wetlands, such as rice fields that provide giant garter snake habitat, are not subject to section 404 regulation. For example, in the recent jurisdictional determination for the American River Watershed Investigation, the Corps found that the 373 km (232 miles), totalling 515 ha (1,272 ac) of canal and waterway habitat in the American Basin, only 153 ha (379 ac) constituted jurisdictional wetlands. Moreover, most maintenance activities on agricultural lands are not subject to State laws or local ordinances. Thus, legal mechanisms often are not available to protect giant garter snake populations inhabiting artificially created and maintained wetlands.

The California Environmental Quality Act and California Endangered Species Act are the primary environmental legislation at the State level that potentially benefit giant garter snakes. The snake was listed as a threatened species by the State in 1971. Although these State laws provide a measure of protection to the species and have resulted in the formulation of mitigation measures to reduce or offset impacts for projects proposed in certain giant garter snake habitats, these laws do not adequately protect the species in all cases. Numerous activities do not fall under the purview of this legislation, such as projects proposed by the Federal government, and State statutory

exemptions. Further, these laws at times are not adequately enforced. Where overriding social and economic considerations can be demonstrated, these laws allow project proposals to go forward, even in cases where the continued existence of the species may be jeopardized, or where adverse impacts are not mitigated to a point of insignificance.

Five of the known populations occur on State and Federal lands managed for wildlife purposes. These are: Gray Lodge Waterfowl Management Area, Kesterson National Wildlife Refuge (NWR), San Luis NWR, Los Banos Wildlife Area, and Mendota Wildlife Area. Although the giant garter snake populations in these areas appear relatively secure, these populations may be vulnerable to potentially incompatible management practices and flooding. For example, recent surveys indicate that giant garter snake population levels have not recovered from the effects of heavy flooding in 1986 at Mendota Wildlife Area (CDFG, unpubl. data).

E. Other Natural or Manmade Factors Affecting its Continued Existence

As discussed under Factors A, C, and D, agricultural activities affect giant garter snakes positively and negatively. Most of the historical habitat loss was caused by the diking and draining of wetlands for agricultural purposes. Agricultural conversions, including maintenance activities, incrementally continue to eliminate giant garter snake habitat. Particularly in the southern portion of its range, intensive control of vegetation along water delivery and drainage facilities progressively is eliminating remaining habitat and preventing reestablishment of former habitat. Application of fertilizers and pesticides, although not yet studied as potential threats to the species, could degrade water quality and reduce prey populations to the extent that giant garter snake populations are reduced or eliminated. In addition, selenium contamination of irrigation drainwater throughout portions of the San Joaquin Valley may pose a threat to some populations.

On the other hand, the species is known to inhabit irrigation and drainage canals where adequate vegetative cover remains. In fact, the majority of known populations occur in artificial wetlands associated with agricultural land uses. This is particularly true in certain rice production areas, where giant garter snakes inhabit water management facilities and adjoining rice fields. As described above, the largest extant population of giant garter snakes occurs in association with rice production areas of the American Basin. The seasonal drying of rice ponds and canals incidentally may benefit the giant garter snake by preventing establishment of populations of large predatory fish.

The recent 5-year drought in California has resulted in drying of many seasonal wetlands that potentially provide habitat for the giant garter snake during "normal" water years. Some populations inhabiting seasonal and intermittent wetlands probably have become extirpated or greatly reduced by this prolonged drought. In response to State-wide water shortages for agricultural, municipal, and industrial uses, water management agencies, including the California Department of Water Resources and U.S. Bureau of Reclamation, have announced major reductions in delivery for agricultural uses (Grubb 1991). Reduced levels of water delivery for agricultural purposes could adversely impact giant garter snake populations dependent upon agricultural water. In addition, the Department of Water Resources has begun acting as a broker to facilitate transfer of water from districts with extra supplies to those with inadequate reserves (Schnitt 1991). Water districts from around the State are offering to purchase water from water districts in rice production regions of the Sacramento Valley with superior water rights (*ibid.*). If such transactions are approved, these additional reductions in water delivery could accentuate the impact of drought on the giant garter snake.

Some giant garter snake populations also are vulnerable to adverse effects from flooding. As described above, giant garter snakes seek habitat at higher elevations in which to retreat during the winter dormancy period. Flooding of these retreat areas exposes inactive snakes to the threat of drowning and increased predation. Past, proposed, and ongoing projects have reduced greatly the availability of winter retreat habitat. Surveys conducted after the heavy flooding associated with the February 1986 storm indicated that several giant garter snake populations throughout the southern and central regions of its range had been eliminated or greatly reduced because of a lack of winter retreat habitat (CDFG, unpubl. data).

Livestock grazing also represents a threat to the species. The giant garter snake requires dense vegetative cover in proximity to foraging and basking areas in which to seek refuge from predators and other forms of disturbance. The attraction of livestock to water sources appears to have contributed to the elimination and reduction of the quality of available habitat throughout portions of the species' range (George Hansen, unpubl. report, 1982).

Habitat loss throughout the range of the giant garter snake has resulted in a patchwork of fragmented and isolated habitat remnants. Because of small population size and limited habitat availability, most of the remaining populations appear vulnerable to extirpation from unpredictable environmental, genetic, and demographic events. Island biogeographic theory suggests that extinction rates increase as habitat size decreases and distance from neighboring populations increases. Most remaining giant garter snake populations are small and geographically isolated from one another. These factors predispose such populations to mortality and emigration rates that exceed birth and immigration rates. Further, as remaining habitat units decrease in size, edge effects become increasingly important; smaller habitats have less space available to buffer adverse impacts from outside influences, such as predation, human disturbance, livestock grazing, or chemical contamination. In addition, giant garter snake populations in smaller habitat fragments often are more susceptible to the effects of chance environmental events, such as fire, flooding, and drought.

The breeding of closely related individuals can cause genetic problems in small populations, particularly the expression of deleterious genes (known as inbreeding depression). Individuals and populations possessing deleterious genetic material are less able to cope with environmental conditions and adapt to environmental change. Further, small populations are subject to the effects of genetic drift (the random loss of genetic variability). This phenomenon also reduces the ability of individuals and populations to successfully respond to environmental stresses. Overall, these genetic factors could influence the survivability of the many smaller, genetically isolated giant garter snake populations.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred course of action is to list the giant garter snake as endangered. The current restriction of most giant garter snake populations to small patches of variable quality, privately-owned habitat, and the numerous ongoing and

proposed development projects within its range are imminent threats to the species. Because the giant garter snake is in danger of extinction throughout all or a significant portion of its range, it fits the definition of endangered as defined by the Act. Critical habitat is not being designated for this species for reasons discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for the giant garter snake. Five giant garter snake populations occur on wildlife refuges managed by the Service or California Department of Fish and Game. These agencies are aware of the presence of the species and the importance of protecting the giant garter snake and its habitat. However, most populations on private lands typically contain low numbers of individuals and occur in small patches of variable quality habitat. This situation renders the species vulnerable to acts of vandalism, such as trapping, habitat manipulation, poisoning, or collection, which could seriously deplete population levels and cause irreparable harm. Although fish eating snakes are relatively difficult to keep in captivity, giant garter snakes have been found for sale in pet shops (John Brode, pers. comm., 1991). Considering that rare and listed species typically generate high levels of demand relative to supply in reptilian trade markets, the Service anticipates that the threat of unauthorized collection would increase were the giant garter snake to be listed by the Federal government. Publication of maps and precise descriptions delineating critical habitat areas would likely lead to increased collection of this species and violation of section 9 of the Act.

As discussed above under Factor D, many of the artificially created habitats inhabited by giant garter snakes, such as irrigation and drainage canals, do not fall under Federal jurisdiction. Absent jurisdiction by Federal agencies, designation of critical habitat on private land does not afford additional protection to listed species. Where Federal jurisdiction does extend to populations on private lands, habitat protection will be addressed through the recovery process under section 4 of the Act and through the formal consultation requirements under section 7 of the Act. Therefore, the Service finds that designation of critical habitat is not prudent at this time, because such designation would increase the degree of threat from vandalism and collecting and because it is unlikely to aid in conservation of the giant garter snake.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Giant garter snake populations inhabiting wetlands on private and public lands would fall under the regulatory jurisdiction of the Corps, pursuant to section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act. As described under Factor A above, numerous commercial developments currently are proposed in known and likely giant garter snake habitat. Pursuant to 33 CFR 330.5(b)(3), project proposals in giant garter snake habitat otherwise allowed under nationwide permit authority would be subject to scrutiny under section 7 of the Endangered Species Act and imposition of special permit conditions needed to avoid and/or offset impacts incurred by the projects. Pursuant to 33 CFR part 325, individual permits, letters of permission, and regional permits issued by the Corps also would be subject to consultation requirements under section 7 of the Act. In addition, any water development projects proposed by Federal agencies, such as the Department of the Army and U.S. Bureau of Reclamation, would fall under the purview of section 7 of the Act. The American River Watershed Investigation, Sacramento Metropolitan Area Investigation, and the Merced County Streams project, among other Federal project proposals, may require modifications to avoid and/or offset impacts to the giant garter snake should this listing proposal be made final. As discussed above, the giant garter snake is known to occur on several waterfowl management areas owned by the State or Federal government. Habitat manipulation and recreational activities on these areas may be affected by the regulatory requirements of sections 7, 9, and 10 of the Act.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or

suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor at the Sacramento Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Peter C. Sorensen (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17 subchapter B of chapter I, title 50 of the Code Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under REPTILES, to the list of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* * * *			*	*		*	
Reptiles:							
* * * *			*	*		*	
Snake, giant garter	*Thamnophis gigas*	U.S.A. (CA)	Entire	E		NA	NA
* * * *			*	*		*	

Dated: December 5, 1991.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91-30805 Filed 12-26-91; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 56, No. 249
Friday, December 27, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

December 20, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from:

Department Clearance Office, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 720–2118

Revision

• *Agricultural Marketing Service*

Reporting Requirements Under Regulation Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products
DA 125, 132, 155
On occasion
Business or other for-profit; 11,100 responses; 660 hours
Lynn G. Boerger, (202) 720–9381

• *Animal and Plant Health Inspection Service*

Domestic Quarantines
PPQ Forms 527, 530, 537, 540, 543
On occasion
State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; 830,194 responses; 78,223 hours
Andrea M. Elston, (301) 436–4478

• *Agricultural Marketing Service*

Apricots Grown in Designated Counties in Washington—Marketing Order No. 922
On occasion; Annually; Biennially
Farms; Businesses or other for-profit; Small businesses or organizations; 186 responses; 34 hours
Gary D. Rasmussen, (202) 720–9918

• *Agricultural Marketing Service*

Peaches Grown in Designated Counties in Washington, Marketing Order No. 921
On occasion
Farms; Businesses or other for-profit; Small businesses or organizations; 326 responses; 62 hours
Gary Rasmussen, (202) 720–9918

• *Agricultural Marketing Service*

Melons Grown in South Texas, Marketing Order No. 979
Recordkeeping; On occasion; Monthly; Annually
Farms; Businesses or other for-profit; Small businesses or organizations; 200 responses; 27 hours
Robert F. Matthews, (202) 720–2431

Extension

• *Agricultural Cooperative Service*

Compliance Review (Farmer Cooperatives)
ACS–40
On occasion
Businesses or other for-profit; 30 responses; 15 hours
Andrew A. Jermolowicz, (202) 690–2362

Reinstatement

• *Farmers Home Administration*

7 CFR 1965–A, Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases
Forms FmHA 440–2, 9, 26, 443–16, 465–1, 5 and 1965–11, 13, 15
On occasion
Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations; 29,516 responses; 18,971 hours
Jack Holston, (202) 720–9736

• *Farmers Home Administration*

7 CFR 1943–A, Insured Farm Ownership Loan Policies, Procedures, and Authorizations
FmHA 443–17
On occasion
Individuals or households; Farms; 357 responses; 138 hours
Jack Holston, (202) 720–9736

• *Animal and Plant Health Inspection Service*

Application/Certification Purebred Animals Imported for Breeding—VS Form 17–338
VS Form 17–338
On occasion
Farms; 450 responses; 113 hours
Dr. Samuel Richeson, (301) 436–8590

Larry K. Roberson,
Deputy Departmental Clearance Officer.

[FR Doc. 91–30957 Filed 12–26–91; 8:45 am]
BILLING CODE 3410–01–M

Food Safety and Inspection Service

[Docket No. 90–025N]

Livestock and Poultry Connected With Biotechnology Research

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice (1) reaffirms a previously published policy statement concluding that animals involved in biotechnology experiments are research animals and are, therefore, subject to the existing regulations for livestock and poultry used for research, and (2) advises that the Food Safety and Inspection Service (FSIS) will inspect for food use livestock and poultry which were involved in such research but which are not genetically modified products of biotechnology. This notice is intended to accommodate public interest in Federal oversight of food applications of biotechnology.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Marvin A. Norcross, Deputy Administrator, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 205–0495.

SUPPLEMENTARY INFORMATION: The livestock and poultry addressed by this notice are those derived from attempts

to bring about genetic improvements by transgenesis. Currently, this is usually done by injecting deoxyribonucleic acid (DNA) into fertilized eggs. Such experiments result in only a small proportion of animals being born with the intended genetic change. Currently, over 90 percent of the animals resulting from such experiments do not contain the intended gene. Because the genetic change is not present in these animals to distinguish them from the original animal line, they are not, in fact, transgenic.

In 1986, USDA published a statement of policy in the **Federal Register** (51 FR 23336) concerning research and the regulation of biotechnology applications in agriculture, including meat and poultry products. The policy statement (51 FR 23343) outlined how existing regulations would apply to food animals subjected to or resulting from biotechnology. It concluded that animals used in gene transfer experiments were subject to the experimental animal regulations, 9 CFR 309.17 and 9 CFR 381.75, because they were treated with a chemical such as injected DNA or other nucleic acid vector. This notice reaffirms that notice, specifically with regard to animals produced as a result of gene transfer experiments.

The experimental animal regulations specify that approval must be obtained from FSIS before experimental animals may be presented for slaughter under the Federal meat and poultry products inspection regulations. Thus, the sponsor or investigator of covered experiments must submit data or a summary evaluation of data to demonstrate that the products of livestock or poultry will not be adulterated. Points to consider in demonstrating that particular transgenic animal lines are not adulterated will be made available in 1992. For nontransgenic livestock or poultry derived from transgenic experiments, the data should be submitted to FSIS and would have to show that the animals to be slaughtered for food use do not have the experimental transgene and consequently are equivalent to the parental line and thus, are not adulterated as a result of the experiment. Given the current and continuously evolving technology in this area, there are likely to be a variety of ways in which to demonstrate that an intended genetic change has not occurred in the animals. The Agency will issue guidelines concerning what would be considered sufficient data, or an acceptable summary evaluation of such data. These guidelines will be provided by the Science and Technology Program, upon request.

Written approval of requests to present experimental animals for slaughter, if granted, will be provided by the Deputy Administrator, Inspection Operations. Upon presentation for Federal inspection of experimental animals that have been approved for slaughter, they would then be subjected to the same inspection procedures and regulations as food animals from traditional production practices.

Done at Washington, DC, on: November 12, 1991.

Ronald J. Prucha,

Acting Administrator.

[FR Doc. 91-30960 Filed 12-26-91; 8:45 am]

BILLING CODE 3410-DM-M

Forest Service

Revocation of Exemption; Eagle Lake Ranger District, Lassen National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice for Revocation of Exemption from Appeal, Salvage and Fuel Reduction Environmental Assessment, Eagle Lake Ranger District, Lassen National Forest.

SUMMARY: The Forest Service is revoking the previous exemption from appeal regarding the decision to sell dead and dying trees that are being killed by the combined effects of severe drought and bark beetles. The project objectives were to reduce the fire hazard, to recover the value of the timber, and to rehabilitate the affected areas. The Salvage and Fuel Reduction Environmental Assessment (EA) has been prepared for all compartments of the Eagle Lake Ranger District, Lassen National Forest, which are located west of the community of Susanville, California

The Lassen National Forest initially identified a higher than normal level of tree mortality occuring throughout the Forest as a reusit of five years of below normal precipation.

The Forest Supervisor determined through environmental analysis, which included public scoping, that there was good cause to expedite the project. Consideration was given to the fact that the removal of dead and dying timber as soon as possible was essential if the timber is to be utilized, its value to be recovered, and the fire hazard to be reduced.

Subsequent to the Lassen National Forest Supervisor's request for exemption and my granting of the request, published in the **Federal Register** on Tuesday, October 29, 1991, management priorities have been adjusted on the Eagle Lake Ranger District, Lassen National Forest.

On December 10, 1991, the Lassen National Forest informed the Regional Office (Region 5) that as a result of the shift in priorities the Forest will not offer a salvage timber sale under the Salvage and Fuel Reduction EA until approximately June, 1992.

It is my conclusion that the basis for originally granting the exemption from appeals no longer exists. Therefore, it is my decision to revoke the exemption of October 29, 1991. Upon publication of the Decision Notice for the Salvage and Fuel Reduction Environmental Assessment for the Eagle Lake Ranger District, Lassen National Forest, the decision shall be subject to appeal as provided under 36 CFR part 217 *et seq.*

EFFECTIVE DATE: This decision will be effective December 27, 1991.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Joe Barratt, Acting Timber Management Staff Director, Pacific Southwest Region, Forest Service, USDA Forest Service, 630 Sansome Street, San Francisco, CA 94111 at (415) 705-2648, or to Leonard Atencio, Forest Supervisor, Lassen National Forest, 55 South Sacramento Street, Susanville, CA 96130 at (916) 257-2151.

ADDITIONAL INFORMATION: The Cooperative Forestry Assistance Act of 1978 authorizes the Secretary of Agriculture to enhance the growth and maintenance of forests, promote the stability of forest-related industries and employment associated therewith, aid in forest fire prevention and control, conserve the forest cover on watersheds, and protect recreational apportunities and other forest resources.

The environmental analysis for this proposal was documented in the Salvage and Fuel Reduction Environmental Assessment. Public participation in the analysis was solicited through Public Notice published in the Lassen County Times on February 19, 1990.

Additionally, scoping letters were sent to various individuals, businesses, and state and private organizations, soliciting their concerns about the project during February of 1991. Comments received were considered in the issues, range of alternatives and the management requirements and mitigation measures developed. The project files and related maps are available for public review at the Eagle Lake Ranger District, Susanville, California.

Dated: December 19, 1991.

Edward Whitmore,

Acting Deputy Regional Forester.

[FR Doc. 91-30916 Filed 12-26-91; 8:45 am]

BILLING CODE 3410-11-M

Far East Salvage and Recovery Project, Boise National Forest, Boise County, Idaho; Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for a salvage and recovery project in the Grandgean-South Fork Payette River area of the Lowman Ranger District, Boise National Forest. The area is approximately 80 miles northeast of Boise, Idaho.

The agency invites written comments and suggestions on the scope of the analysis. The agency also hereby gives notice of the environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: The proposal has been previously scoped by a public meeting and two mailings. The public meeting was held at the Boise National Forest Supervisor's Office, Boise Idaho, at 7 p.m. on December 11, 1991. The Lowman Ranger District mailed a scoping letter on September 27, 1991, and an additional scoping letter on November 7, 1991, to people who may be affected by the decision. In addition, a legal notice was published in the Idaho World on October 9, 1991. Comments recieved from this scoping meeting, the letters, and the notice, will be incorporated into the analysis process.

Additional written comments concerning the proposal are encouraged. To be considered in the Draft Environmental Impact Statement (DEIS), comments should be submitted on or before January 27, 1992.

ADDRESSES: Submit written comments to: District Ranger, Lowman, Ranger District, Boise National Forest, HC77 Box 3020, Lowman, Idaho 83637.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Dautis Pearson, Project leader, Lowman Ranger District, 208-259-361.

SUPPLEMENTARY INFORMATION: The purpose of the proposed action is to implement the Boise National Forest Land Resource Management Plan by increasing the growth and yield of timber stands through salvage harvesting of insect killed trees, pheremone baiting of insects to assist in control, and reforestation of mortality, stands. The project is located in the Grandjean and South Fork Payette River area of the Boise National Forest.

Alternatives to the proposal will consider lesser amounts of individual activities and varius combinations of the activities. The most significant differences between alternatives will be: (1) In any inventoried roadless area is treated; and (2) the amount of inventoried roadless area that is treated. A No Action (the project will not take place) alternative will also be considered in the analysis.

As lead agency, the Forest Service will analyze and document direct, indirect and cumulative environmental effects of the range of alternatives. Each alternative will include mitigation measures and monitoring requirements.

The EIS will tier to the Boise National Forest Land and Resource Management Plan (Forest Plan) FEIS (1990) which has specified goals, objectives, desired future conditions, management area direction and standards for the project area. The project area is located in the Upper South Fork Payette River Management Area. Direction for this area has emphasis on wildlife, timber, range, and visuals.

Preliminary issues for the proposal that have been identified to date include the following:

1. Fisheries habitat would need to be maintanined or improved.
2. Threatened, Endangered, and Sensitive plant and animal species would need to be assessed.
3. Soils and hydrology would need to be analyzed for impacts.
4. Timber harvest may alter visual quality and affect the undeveloped character of a part of the Ten Mile/Black Warrior Inventoried Roadless Area.
5. The beetle infestation and resulting mortality are occurring over a large area and may be impacting the potential for future harvest or recovery of forest products.

The scoping process for this project is intended to further define these and other preliminary issues.

Federal, State and local agencies, potential purchasers, and other organizations and individuals who may be interested in or affected by the decision are invited to participate in the scoping process. This process includes:

—Identifying significant issues.
—Determining potential cooperating agencies.
—Identifying groups or individuals interested or affected by the decision.

The analysis is expected to take approximately three months. The draft environmental impact statement (DEIS) is scheduled to be completed and available for public review in February, 1992. The final environmental impact statement and Record of Decision are scheduled to be completed by April, 1992.

Morris Huffman, District Ranger, Lowman Ranger District, Boise National Forest, is the responsible official.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.** It is very important that those interested in the proposed action participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequancy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for Implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contents. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Enviornmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel,* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to insure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

Dated: December 17, 1991.

Morris D. Huffman,

District Ranger, Lowman Ranger District, Boise National Forest.

[FR Doc. 91-30932 Filed 12-26-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 548]

Approval for Expansion of Foreign-Trade Zone 153, San Diego, CA

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

Whereas, the City of San Diego, California, Grantee of Foreign-Trade Zone No. 153, has applied to the Board for authority to expand its general-purpose zone within the Otay Mesa area in San Diego, California, within the San Diego Customs Port of entry;

Whereas, the application was accepted for filing on January 10, 1991, and notice inviting public comment was given in the **Federal Register** on January 22, 1991 (Docket 2–91, 56 FR 2160);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the San Diego area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed on January 10, 1991. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the Army District Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 16th day of December, 1991.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–30975 Filed 12–26–91; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 547]

Resolution and Order Approving the Application of the County of Monroe, New York, for a Special-Purpose Subzone at the Auto Components Plant of GM/DELCO in Rochester, New York

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the County of Monroe, New York, grantee of FTZ 141, filed with the Foreign-Trade Zones Board (the Board) on October 2, 1990, requesting special-purpose subzone status at the automobile parts manufacturing plant of General Motors Corporation, Delco Products Division, located in Rochester, New York, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the FTZ Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in Rochester, NY

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the County of Monroe, New York, grantee of Foreign-Trade Zone No. 141, has made application (filed October 2, 1990, FTZ Docket 39–90, 55 FR 43018, 10/25/90) in due and proper form to the Board for authority to establish a special-purpose subzone at the automobile components manufacturing plant of General Motors Corporation, Delco Products Division, located in Rochester, New York;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed October 2, 1990, the Board hereby authorizes the establishment of a subzone at the GM/Delco plant in Rochester, New York, designated on the records of the Board as Foreign-Trade Subzone No. 141C at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefore.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 16th day of December, 1991, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administraton, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-30976 Filed 12-26-91; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 552]

Resolution and Order Regarding the Application of the Port of Houston Authority Approving With Restrictions Special-Purpose Subzone Status at the Phibro Refining, Inc., Refinery in Houston, Texas and Disapproving Subzone Status for the Phibro Refinery in Texas City, Texas; Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Port of Houston Authority, grantee of FTZ 84, filed with the Foreign-Trade Zones Board (the Board) on May 18, 1990, requesting special-purpose subzone status at the oil refineries of Phibro Refining, Inc., (formerly Hill Petroleum Company) located in Houston and Texas City, Texas, the Board, finding (1), in regard to the Houston site, that the requirements of the FTZ Act, as amended, and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval were subject to the following restrictions: foreign crude oil used as fuel for the refinery shall be dutiable; and, privileged foreign status shall be elected on foreign crude oil and other foreign merchandise admitted to the subzone, approves that part of the application subject to the foregoing restrictions; and, finding (2), in regard to the Texas City site, that such requirements would not be satisfied because approval of that part of the proposal would not be in the public interest, disapproves that part of the application.

The approval of the Houston site is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Board Order and Grant of Authority Establishing a Foreign-Trade Subzone in Houston, Texas and Disapproving Subzone Status for a Proposed Site in Texas City, Texas

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones;

Whereas, the Port of Houston Authority, grantee of FTZ 84, has made application (filed 5–18–90, FTZ Docket 19–90, 55 FR 22053, 5–31–90) to the Board for authority to establish special-purpose subzones at the oil refineries of Phibro Refining, Inc., (formerly Hill Petroleum Company) in Houston, and Texas City, Texas;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied with respect to the request for subzone status at the Houston refinery, but that such requirements are not satisfied with respect to the request for subzone status at the Texas City refinery;

Now, Therefore, the Board hereby authorizes the establishment of a subzone at the Phibro refinery in Houston, Texas, designated on the records of the Board as Foreign-Trade Subzone 84F, at the location described in the application, subject to the Act and the Board's Regulations (as revised, 56 FR 50790–50808, 10/8/91), including § 400.28, and to the restrictions in the resolution accompanying this action, and disapproves the request for subzone status at the Phibro Refinery in Texas City, Texas.

Signed at Walshington, DC, this 20th day of December, 1991, pursuant to Order of the Board.

Francis J. Sailer,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91-30978 Filed 12-26-91; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 553]

Resolution and Order Approving With Restrictions the Application of the Port of Houston Authority for a Subzone at the Heating and Cooling Equipment Manufacturing Plant of Goodman Manufacturing Corporation in Houston, Texas

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Port of Houston Authority, grantee of Foreign-Trade Zone 84, filed with the Foreign-Trade Zones Board (the Board) on February 19, 1991, requesting special-purpose subzone status for the heating and cooling equipment manufacturing plant of Goodman Manufacturing Corporation in Houston, Texas, within the Houston Customs port of entry, the Board, finds that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest, if approval were subject to the restrictions listed below, approves the application, subject to the following two restrictions:

1. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign steel mill products admitted to the subzone; and,

2. Privileged foreign status shall be elected on all foreign merchandise admitted to the subzone for use in the production of central-type (unitary) heating and/or air-conditioning products.

The approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority for Subzone Status at the Goodman Manufacturing Corporation Plant in Houston, Texas

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs port of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Port of Houston Authority, Grantee of Foreign-Trade Zone No. 84, has made application (filed 2–19–91, FTZ Docket 11–91, 56 FR 9667, 03–07–91) to the Board for authority to establish a subzone at the heating and cooling equipment manufacturing plant of Goodman Manufacturing Corporation in Houston, Texas;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval were given subject to the restrictions in the resolution accompanying this action;

Now, therefore, in accordance with the application filed February 19, 1991, the Board hereby authorizes the establishment of a subzone at the Goodman Manufacturing Corporation plant in Houston, Texas, designated on the records of the Board as Foreign-Trade Subzone 84G, at the location described in the the application, subject to the restrictions in the resolution accompanying this action, and to the Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including Section 400.28.

Signed this 20th day of December, 1991, pursuant to Order of the Board.

Francis J. Sailer,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 91–30977 Filed 12–26–91; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–533–803]

Notice of Postponement of Preliminary Antidumping Duty Determination: Bulk Ibuprofen From India

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Hager or Paulo F. Mendes, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–5055 or (202) 377–5050, respectively.

Postponement

On August 20, 1991, the Department of Commerce ("the Department") initiated an antidumping duty investigation of bulk ibuprofen from India. The notice stated that we would issue our preliminary determination on or before January 7, 1992 (56 FR 42026, August 26, 1991).

On December 11, 1991, counsel for petitioners requested that the Department postpone the preliminary determination in this investigation until 210 days after the date on which the antidumping petition was filed. We find no compelling reason to deny petitioner's request. Therefore, pursuant to 19 CFR 353.15(c), we are postponing the date of the preliminary determination in this investigation until not later than February 26, 1992. The U.S. International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Tariff Act of 1930, as amended ("the Act").

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: December 19, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91–30979 Filed 12–26–91; 8:45 am]

BILLING CODE 3510–DS–M

[A–508–604]

Industrial Phosphoric Acid From Israel; Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke in Part; Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and intent to revoke in part the antidumping duty order.

SUMMARY: In response to requests by the petitioner and one respondent, the Department of Commerce has conducted an administrative review of the antidumping duty order on industrial phosphoric acid from Israel. The review covers two manufacturers/exporters of this merchandise to the United States and the period August 1, 1989 through July 31, 1990.

We preliminarily determine the dumping margin for Negev Phosphates to be zero. Provided that this conclusion remains unchanged in the final results of this review, and that we are satisfied that Negev Phosphates is not likely to sell the subject merchandise at less than fair value in the future, the Department intends to revoke the antidumping duty order with respect to Negev Phosphates upon publication of these final results.

Because Haifa Chemicals did not respond to the Department's questionnaire, we are using best information otherwise available for cash deposit and appraisement purposes. As best information for Haifa Chemicals, we preliminarily determine the dumping margin to be 6.82 percent *ad valorem*, the highest dumping margin for any company under the order. We invite interested parties to comment on these preliminary results and intent to revoke.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 1990, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (55 FR 32279) of the antidumping duty order on industrial phosphoric acid from Israel (52 FR 31057, August 19, 1987) for the period August 1, 1989 through July 31, 1990. On

August 29, 1990, FMC Corporation and Monsanto Company, the petitioners, requested an administrative review of two manufacturers/exporters, Negev Phosphates, Ltd., and Haifa Chemicals, Ltd. On August 31, 1990, Negev Phosphates also requested a review. We initiated the review of the two manufacturers/exporters on September 24, 1990 (54 FR 39032). A timely request for revocation from the antidumping duty order was submitted by Negev Phosphates. The Department has now conducted the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by the review are shipments of industrial phosphoric acid (IPA). This merchandise is currently classificable under item number 2809.20.00 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers Negev Phosphates, Ltd., and Haifa Chemicals, Ltd., two manufacturers/exporters to the United States of Israeli industrial phosphoric acid, and the period August 1, 1989 through July 31, 1990. For Haifa Chemicals, which did not respond to the Department's questionnaire, we used best information available for assessment of antidumping duties and cash deposit purposes. Best information is the highest margin for a company under the order, 6.82 percent.

United States Price

As provided in section 772(b) of the Tariff Act, we used the purchase price of the subject merchandise to represent United States price since the merchandise was purchased by an unrelated U.S. customer directly from the foreign manufacturer prior to importation. We calculated purchase price sales based on the unpacked, C&F prices to unrelated purchasers in the United States. We made deductions, where applicable, for brokerage/handling, foreign inland freight, and ocean freight.

Sales which entered the United States between August 1, 1989 and December 31, 1989 have been assessed countervailing duties; therefore, they are entitled to an upward adjustment to United States price pursuant to section 772(d)(1)(D) of the Tariff Act. See Industrial Phosphoric Acid From Israel; Final Results of Countervailing Duty Administrative Review, 56 FR 50854 (October 9, 1991). Therefore, we have increased Negev's U.S. price by the amount of the company's export subsidies found in the 1989 administrative review of the countervailing duty order on Israeli industrial phosphoric acid. For the period January 1, 1990 through July 31, 1990, countervailing duties have not been assessed on entries of the merchandise under review; therefore, we cannot make an adjustment to United States price at this time. See *Serampore Industries Pvt. Ltd. et. al.* v. *United States*, 11 CIT 866, 675 F. Supp. 1354 (1987); see also Final Results of Antidumping Duty Administrative Review; Certain Iron Construction Castings From India, 55 FR 40697 (October 4, 1990).

Foreign Market Value

In calculating foreign market value, the Department used home market price, as defined in section 773 of the Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed, ex-factory or delivered price to all purchasers in the home market. Where applicable, we made adjustments for inland freight, and differences in packing, direct selling and credit expenses.

Preliminary Results of Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period August 1, 1989 through July 31, 1990:

Manufacturer/exporter	Margin (percent)
Negev Phosphates	0.00
Haifa Chemicals	6.82
All others	0.00

Negev Phosphates has had sales at not less than fair value for at least three consecutive years. In addition, as provided in 19 CFR 353.25(a)(2)(iii), Negev Phosphates has agreed in writing to an immediate suspension of liquidation and reinstatement of the order if circumstances develop which indicate that Israeli industrial phosphoric acid exported to the United States by Negev Phosphates is being sold at less than fair value. Therefore, we intend to revoke the antidumping order on Israeli industrial phosphoric acid with respect to Negev Phosphates. If this partial revocation is made final, it will apply to all unliquidated entries of this merchandise produced by Negev Phosphates and exported to the United States entered, or withdrawn from warehouse, for consumption, on or after August 1, 1990.

Parties to the proceeding may request disclosure and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e).

The Department will publish the final results of the administrative review including the results of its analysis of issues raised in any case or rebuttal briefs or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from Israel entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies which remain subject to the order will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published in the final determination covering the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or if not covered in this review, the most recent review period or the original investigation; and (4) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews, and who are

unrelated to the reviewed firms or any previously reviewed firm will be the "All Others" rate established in the final results of this administrative review. This rate represents the highest rate for any firm in the administrative review (whose shipments to the United States were reviewed), other than those firms receiving a rate based entirely on best information available. These deposit requirements, when imposed, shall remain in effect until the publication of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 17, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-30980 Filed 12-26-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-813]

Preliminary Determination of Sales at Less Than Fair Value: Nepheline Syenite From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: John Gloninger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-2778.

PRELIMINARY DETERMINATION:

Background

Since the notice of initiation on August 1, 1991 (56 FR 37526), the following events have occurred.

On August 22, 1991, the Department of Commerce (the Department) presented its questionnaire to Unimin Canada Ltd., which accounted for at least 60 percent of known exports to the United States during the period of investigation (POI), in accordance with 19 CFR 353.42(b).

On August 26, 1991, the International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that a regional industry in the United States is being materially injured by reason of imports of nepheline syenite (NS) from Canada (56 FR 43938).

On September 9 and 26, 1991, we received responses to the Department's questionnaire. We issued deficiency letters on September 26 and October 21, 1991, and received responses on October 11 and November 5, 1991. We issued a supplementary deficiency letter on November 7, 1991, and received a response to it on November 19, 1991. On November 27, 1991, we received revised computer responses from Unimin.

On December 9, 1991, counsel for Pittsburgh Corning Corporation entered a notice of appearance in the investigation and submitted comments challenging the standing of the petitioner, The Feldspar Corporation (TFC). On September 19, 1991, Unimin requested a suspension agreement, pursuant to article 4.2 of the GATT Antidumping Code, which requires the Department to give respondents in a regional industry case the opportunity to enter into a suspension agreement before any antidumping duties can be levied. On November 20, 1991, Unimin submitted a draft suspension agreement for the Department to consider. On December 17, 1991, TFC submitted to the Department its comments concerning the Unimin draft agreement. We are considering both of these issues and will decide them in a subsequent determination in this proceeding.

Scope of Investigation

The product covered by this investigation is nepheline syenite. For purposes of this investigation, nepheline syenite is a coarse crystalline rock consisting principally of feldspathic minerals (*i.e.*, sodium-potassium feldspars and nepheline), with little or no free quartz, and ground no finer than 140 mesh.

Nepheline syenite is currently classifiable under item 2529.30.0010 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The POI is February 1, 1991, through July 31, 1991.

Such or Similar Comparisons

We have determined for purposes of the preliminary determination that the product covered by this investigation comprises a single category of "such or similar" merchandise.

Fair Value Comparisons

To determine whether sales of NS from Canada to the United States were made at less than fair value, we compared the United States price to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We compared U.S. sales of NS to sales of identical and similar NS sold in Canada.

United States Price

We based United States price on purchase price, in accordance with section 772(b) of the Tariff Act of 1930, as amended (the Act), because all U.S. sales were made to unrelated parties prior to the importation into the United States. Exporter's sales price methodology is not appropriate because the subject merchandise was not introduced into the inventory of Unimin's related U.S. selling agent, this was the customary commercial channel for sales of this merchandise between Unimin and its U.S. customers, and the selling agent acted only as a processor of sales-related documentation and a communication link with unrelated U.S. customers.

We calculated purchase price based on packed, f.o.b. plant and delivered prices. We made deductions, where appropriate, for foreign inland freight, inland freight, marine insurance, loading, U.S. brokerage and handling, and railcar leasing costs in accordance with section 772(d)(2) of the Act. In addition, we made deductions for discounts, rebates and post-sale price adjustments. In accordance with section 772(d)(1)(C) of the Act, we added to the United States price the amount of the Canadian value-added tax that would have been collected had the Canadian government taxed the exports.

Foreign Market Value

In order to determine whether there were sufficient sales of NS in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of NS to the volume of third country sales of NS, in accordance with section 773(a)(1) of the Act. Unimin had a viable home market with respect to sales of NS during the POI.

We calculated FMV based on delivered prices to unrelated customers in the home market. We made deductions, where appropriate, for rebates, inland freight, railcar leasing, loading costs, and post-sale price adjustments. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

Pursuant to 19 CFR 353.56 of the Department's regulations, we made circumstance of sale adjustments, where appropriate, for differences in credit expenses. We recalculated Unimin's imputed credit expenses incurred on home market and U.S. sales net of discounts and rebates. We recalculated credit expenses on those home market and U.S. sales for which Unimin had not

received payment as of the date of its last deficiency response, using the average credit period reported for all sales for which payment had been received. Although Unimin borrowed in both markets, the U.S. interest rate was the lowest rate in both markets. Therefore, we have used Unimin's short-term U.S. interest rate to impute credit expenses on home market sales. This use of the lowest interest rate in both markets is consistent with the Court of Appeal's decision in LMI-La Metalli Industriale, S.P.A. v. United States (LMI), 912 F.2d 455 (Fed. Cir. 1990). We also made a circumstance of sale adjustment for differences in the amounts of value-added taxes.

Lastly, we made an adjustment for physical differences in merchandise, where appropriate, in accordance with 19 CFR 353.57.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of NS from Canada that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Unimin Corp.	9.61
All others	9.61

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than February 7, 1992, and rebuttal briefs no later than February 12, 1992. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on February 14, 1992, at 9:30 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B-099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15.

Dated: December 19, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-30961 Filed 12-27-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-201-504]

Porcelain-on-Steel Cooking Ware From Mexico; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by two respondents and the petitioner, the Department of Commerce has conducted an administrative review of the antidumping duty order on porcelain-on-steel cooking ware from Mexico. The review covers two manufacturers/exporters of this merchandise to the United States and the period December 1, 1989 through November 30, 1990. The preliminarily results indicate dumping margins exist. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Maria McKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2686.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1990, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (55 FR 51139) of the antidumping duty order on porcelain-on-steel cooking ware from Mexico for the period December 1, 1989 through November 30, 1990. On December 26, 1990, respondents Acero Porcelanizado, S.A. de C.V. (APSA) and CINSA, S.A. de C.V., requested an administrative review. On December 27, 1990, petitioner General Housewares Corporation also requested an administrative review. We initiated the review on January 30, 1991 (56 FR 3445). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of porcelain-on-steel cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. This merchandise is currently classifiable under Harmonized Tariff Schedule (HTS) item number 7323.94.00. Kitchenware currently entering under HTS item number 7323.94.00.10 is not subject to the order. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers two manufacturers/exporters, APSA and CINSA, of Mexican porcelain-on-steel cooking ware.

United States Price

In calculating United States price, the Department used purchase price and exporter's sales price, as defined in section 772 of the Tariff Act. For those sales made directly to unrelated parties prior to importation into the United States, we based the United States price

on purchase price, in accordance with section 772(b) of the Act. In those cases where sales were made through a related sales agent in the United States to an unrelated purchaser prior to the date of importation, we also used purchase price as the basis for determining United States price. For the latter sales, the Department determined that purchase price was the appropriate determinant of United States price because the merchandise was shipped directly from the manufacturer to the unrelated buyers, without being introduced into the inventory of the related selling agent. Moreover, direct shipment from the manufacturers to the unrelated buyers was the customary commercial channel for sales of this merchandise between the parties involved. Finally, the related selling agent located in the United States acted only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyers.

Where all the above elements are met, we regard the routine selling functions of the exporter as merely having been relocated geographically from the country of exportation to the United States, where the sales agent performs them. Whether these functions take place in the United States or abroad does not change the substance of the transactions or the functions themselves

Where sales to the first unrelated purchaser occurred after importation into the United States, we based U.S. price on exporter's sales price, in accordance with section 772(c) of the Tariff Act. Purchase price and exporter's sales price were based on the packed, f.o.b. price to unrelated purchasers in the United States. We made adjustments, where applicable, for brokerage, user fees, foreign inland freight and insurance, discounts and rebates, direct and indirect selling expenses, commissions, credit and U.S. Customs duties. An addition to U.S. price was made for value added taxes not imposed by reason of exportation.

Sales which entered the United States between December 1, 1989 and December 31, 1989, have been assessed countervailing duties; therefore, they are entitled to an upward adjustment to the U.S. price pursuant to section 772(d)(1)(D) of the Tariff Act. Therefore, we have increased the U.S. price by the amount of the export subsidies found in the concurrent countervailing duty review. For the period January 1, 1990 through November 30, 1990, countervailing duties have not yet been assessed for the merchandise under review; therefore, we have not made an adjustment to the United States price at this time.

Foreign Market Value

In calculating foreign market value, the Department used home market price, as defined in section 773 of the Tariff Act, for APSA. We also used home market price for CINSA, when sufficient quantities of such or similar merchandise were sold in the home market, at or above the cost of production, to provide a basis for comparison. Home market price was based on the packed, ex-factory or delivered price to related and unrelated purchasers in the home market. Where applicable, we made adjustments for inland freight and insurance, credit expenses, discounts, rebates, commissions, indirect U.S. selling expenses to offset those home market commissions, and home market indirect selling expenses up to the amount of U.S. indirect selling expenses. We used constructed value for CINSA's home market models for which there were insufficient sales at or above the cost of production. Constructed value consisted of the sum of materials, fabrication, overhead, general expenses, profit, and U.S. packing. In accordance with section 773(e)(1)(B), we used the actual amount of general expenses because those amounts were more than the statutory minimum of ten percent. We used the actual amount of profit because it exceeded the statutory minimum of eight percent.

Preliminary Results of the Review

As a result of our review, we preliminarily determine the dumping margins to be:

Manufacturer/ exporter	Time period	Margin (per-cent)
APSA	Dec. 1, 1989 to Nov. 30, 1990.	3.12
CINSA	Dec. 1, 1989 to Nov. 30, 1990.	6.27
All others	Dec. 1, 1989 to Nov. 30, 1990.	6.27

Parties to the proceeding may request disclosure and interested parties may request a hearing not later than 10 days after publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due.

The Department will publish the final results of the administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies will be that established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published in the final results or final determination covering the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or if not covered in this review, the most recent review or the original investigation; and (4) the cash deposit rate for any furture entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews, and who are unrelated to the reviewed firm or any previously reviewed firm, will be the "all other" rate established in the final results of this administrative review. This rate represents the highest rate for any firm in the administrative review (whose shipments to the United States were reviewed), other than those firms receiving a rate based entirely on best information available.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 20, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-30982 Filed 12-26-91; 8:45 am]

BILLING CODE 3510-DS-M

Articles of Quota Cheese; Annual Listing of Foreign Government Subsidies

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Publication of annual list of foreign government subsidies on articles of quota cheese.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its annual list of foreign government subsidies on articles of quota cheese. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 ("the TAA") requires the Department of Commerce ("the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of quota cheese, as defined in section 701(c)(1) of the TAA, and to publish an annual list and quarterly updates of the type and amount of those subsidies.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h)(2) of the TAA) being provided either directly or indirectly by foreign governments on articles of quota cheese. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amount of each subsidy on which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of quota cheese to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the TAA (19 U.S.C. 1202 note).

Dated: December 17, 1991.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

Appendix

QUOTA CHEESE SUBSIDY PROGRAMS

Country	Program(s)	Gross [1] subsidy (¢/lb.)	Net [2] subsidy (¢/lb.)
Belgium	European Community (EC) restitution payments.	42.8	42.8
Canada	Export assistance on certain types of cheese.	30.9	30.9
Denmark	EC restitution payments.	53.1	53.1
Finland	Export subsidy	162.3	162.3
France	EC restitution payments.	58.4	58.4
Greece	EC restitution payments.	81.6	81.6
Ireland	EC restitution payments.	55.4	55.4
Italy	EC restitution payments.	69.9	69.9
Luxembourg.	EC restitution payments.	42.8	42.8
Netherlands.	EC restitution payments.	46.8	46.8
Norway	Indirect (milk) subsidy.	17.8	17.8
	consumer subsidy.	39.4	39.4
		57.2	57.2
Portugal	EC restitution payments.	43.1	43.1
Spain	EC restitution payments.	46.1	46.1
Switzerland	Deficiency payments.	139.8	139.8
U.K.	EC restitution payments.	43.0	43.0.
W. Germany.	EC restitution payments.	51.9	51.9

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 91-30983 Filed 12-26-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-048]

Certain Textiles and Textile Products From Argentina; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on certain textiles and textile products from Argentina, specifically, men's and boys' woolen garments.

EFFECTIVE DATE: December 27, 1991.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Anne D'Alauro, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On November 4, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 56407) its intent to revoke the countervailing duty order on certain textiles and textile products from Argentina (48 FR 53421; November 16, 1978). In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. We had not received a request for an administrative review of the order for the last four consecutive annual anniversary months.

On November 12, 1991, the petitioner, the Amalgamated Clothing and Textile Workers Union, objected to our intent to revoke the order. Therefore, we no longer intend to revoke the order.

This notice is in accordance with 19 CFR 355.25(d).

Dated: December 23, 1991.

Barbara E. Tillman,

Acting Deputy Assistant, Secretary for Compliance.

[FR Doc. 91-30984 Filed 12-26-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by José R. Pérez-Villamil From an Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of decision.

On November 20, 1991, the Secretary of Commerce (Secretary) issued a decision in the consistency appeal of José R. Pérez-Villamil (Appellant). The Appellant had applied to the U.S. Army Corps of Engineers (Corps) for a permit to construct a pier in an ecologically sensitive area which supports endangered and threatened sea turtles, near Tamarindo Bay, on Culebra Island, Puerto Rico. In conjunction with the Federal permit application, the Appellant submitted to the Corps for review of the Puerto Rico Planning Board (PRPB), the Commonwealth of Puerto Rico's (Commonwealth) coastal management agency, under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1456(c)(3)(A), a certification that the proposed activity is consistent with the Commonwealth's Federally-approved Coastal Management Program.

On July 24, 1989, the PRPB objected to the Appellant's consistency certification for the proposed project on the ground that the proposed pier is not in accordance with the Commonwealth's Coastal Management Program policies that protect sea turtle habitats. The PRPB did not recommend any alternatives to the proposed pier. Under CZMA section 307(c)(3)(A) and 15 CFR 930.131 (1988), the PRPB's consistency objection precludes the Corps from issuing a permit for the activity unless the Secretary finds that the activity is either consistent with the objectives or purposes of the CZMA (Ground I) or necessary in the interest of national security (Ground II).

Upon consideration of the information submitted by the Appellant, the Commonwealth and interested Federal agencies, the Secretary made the following findings pursuant to 15 CFR 930.121(b): the proposed pier will cause adverse effects on the resources of the coastal zone, when performed separately or in conjunction with other activities, substantial enough to outweigh its contribution to the national interest. Accordingly, the proposed project is not consistent with the objectives or purposes of the CZMA. Because the Appellant's proposed project failed to satisfy the requirements of Ground I, and the Appellant did not plead Ground II, the Secretary did not override the Commonwealth's objection to the Appellant's consistency certification, and consequently, the proposed project may not be permitted by Federal agencies. Copies of the decision may be obtained from the contact person listed below.

FOR ADDITIONAL INFORMATION CONTACT: Roger B. Eckert, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 606–4200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: December 23, 1991.

Thomas A. Campbell,

General Counsel.

[FR Doc. 91–30989 Filed 12–26–91; 8:45 am]

BILLING CODE 3510–08–M

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council (Council) and its Committees will meet on Janaury 7–9, 1992, at the Radisson Philadelphia Airport, 500 Stevens Drive, Philadelphia, PA, 19113; telephone: 215–521–5900.

Council.—The Council will begin its regular meeting on January 8 at 8 a.m., and should adjourn for the day at approximately 3:45 p.m. This session will be followed by an Executive Committee meeting.

On January 9 the Council will reconvene at 8 a.m., and should adjourn at approximately 11 a.m. In addition to reviewing committee reports, the Council will consider approval of crew member permitting and other fishery management matters as deemed necessary. The Council may also go into closed session (not open to the public) to discuss personnel and/or national security matters.

Committees.—On January 7 the Council's Surf Clam and Ocean Quahog Committee will meet from 10–12 p.m., the Seafood Committee will meet from 1–3 p.m., and the Information and Education Committee will meet at 3:10 p.m. On January 9 at 1 p.m., the Atlantic States Marine Fisheries Commission's Habitat Committee will meet, following adjournment of Council meeting.

For more information, contact John Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901, telephone: (302) 674–2331.

Dated: December 20, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–30889 Filed 12–26–91; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce

A Bycatch Team, composed of staff members from the National Marine Fisheries Service, North Pacific Fishery Management Council (NPFMC), International Pacific Halibut Commission and Alaska, Washington and Oregon state agencies will meet on January 6, 1992. The meeting will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way NE., in room 2143, Building 4, Seattle, Washington and begin at 10 a.m. The Bycatch Team will continue its work on strategic bycatch management measures and prepare a status report for presentation to the NPFMC at its January meeting.

For more information contact Brent Paine, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: December 20, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–30887 Filed 12–26–91; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Teleconference

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's (Council) Budget Committee will hold a telephone conference on January 7, 1992, at 1:30 p.m., at the Council's office (address below).

The purpose of the conference is to allocate additional funds for the operation of the Council during the 9-month period January 1 through September 30, 1992. The Council instructed the Budget Committee to decide on an allocation of additional funds when the total amount available

for augmentation of the Council's FY92 budget was established by the National Marine Fisheries Service.

Members of the public wishing to participate in this conference or desiring further information should contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, room 410, Portland, Oregon 97201; telephone: (503) 326–6352.

December 20, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–30888 Filed 12–26–91; 8:45 am]

BILLING CODE 3510–22–M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Approval of Collection of Information, Compliance Survey of the Bicycle Industry

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval through September 30, 1992, of a collection of information in the form of a survey of firms which manufacture or import bicycles. The purpose of this survey is to assess the over-all level of compliance with regulations which establish safety requirements for bicycles (16 CFR 1500.18(a)(12) and part 1512). These regulations were issued under provisions of the Federal Hazardous Substances Act (15 U.S.C. 1261, 1261) to eliminate or reduce unreasonable risks of death or serious personal injury associated with bicycles. The regulations are applicable to bicycles introduced into interstate commerce after May 11, 1976, and establish safety requirements for the frame, wheels, front fork, brakes, reflectors, and other components of a bicycle. The survey of the bicycle industry is part of a comprehensive plan to assess compliance by regulated industries with 70 rules enforced by the Commission. The Commission will use the information obtained from the survey of the bicycle industry to establish priorities for enforcement of mandatory standards and regulations which the Commission administers. Information obtained from this survey will also be used to support appropriate legal action against any firm which has manufactured or imported bicycles failing to comply with the requirements of the bicycle safety regulations.

Additional Details About the Request for Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Survey of Compliance with the Requirements for Bicycles in 16 CFR 1512.

Type of request: New request.

Frequency of collection: One time.

General description of respondents: Manufacturers and importers of bicycles.

Estimated number of respondents: 65.

Estimated average number of hours per respondent: 8.

Estimated number of hours for all respondents: 520.

Comments: Comments on this request for extension of approval of information collection requirements should be addressed to Elizabeth Harker, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: December 23, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 91–30974 Filed 12–26–91; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 13 January 1992.

Time: 1300–1700 hours.

Place: Pentagon, Washington, DC.

Agenda

Members of the C31 Issue Group of the Army Science Board will meet in the Pentagon to begin work on a new study entitled, "Command and Control on the Move." The primary objective of the meeting will be to finalize the Terms of Reference for the study and to determine the general study plan. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781/0782.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 91–30930 Filed 12–26–91; 8:45 am]

BILLING CODE 3710–08–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 91–6]

Radiation Protection for Workers and the General Public at DOE Defense Nuclear Facilities

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning radiation protection for workers and the general public at DOE defense nuclear facilities. The Board requests public comments on this recommendation.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before January 27, 1992.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Carole J. Council, at the address above or telephone (202) 208–6400.

Dated: December 20, 1991.

John T. Conway,

Chairman.

Radiation Protection for Workers and the General Public at DOE Defense Nuclear Facilities

Dated: December 19, 1991.

[Recommendation 91–6]

The Board and its staff have conducted extensive reviews of radiation protection programs at

Department of Energy (DOE) Headquarters and several DOE sites in the defense nuclear facilities complex. In particular, the Savannah River Site (SRS) health and radiological protection programs have been reviewed on several occasions.

After an inquiry into worker exposures to tritiated water from a moderator water spill at the site, the Board transmitted a report to the Secretary of Energy on May 31, 1991, which reviewed the management and radiation protection issues, as well as other factors that DOE and its contractor identified as root causes of the spill. Before completion of that report, the Board had directed its staff to continue review of technical radiation protection issues that had been surfaced during the inquiry. In October, 1990, the Board's staff reviewed the SRS radiation protection program, which is included by SRS within what are commonly referred to as Health Protection (HP) program and Health Physics program. Board staff conducted follow-up reviews in February and April, 1991. Staff reports based on the October, 1990, and February, 1991, trips were provided to DOE's Defense Programs personnel in letters from the Board dated November 1, 1990, and June 10, 1991, respectively. In its transmittal letter of June 10, 1991, the Board indicated it was giving consideration to the possibility of developing recommendations to the Secretary of Energy in the radiation protection area after further Board review.

On June 20, 1991, representatives from DOE's Defense Programs, the DOE Savannah River Site Special Projects Office, and the operating contractor at SRS briefed the Board and its staff on radiation protection program issues. As a followup to that briefing, the Board conducted a site visit at SRS in July, 1991. During that visit, Board Members interviewed SRS HP personnel and supervisors.

The most recent Board staff assessment of DOE's radiation protection program and the operating contractor's HP program at SRS occurred during the period September 27 through October 10, 1991. The Board's staff reviewed relevant documents, attended briefings and discussions with DOE and operating contractor personnel at DOE Headquarters and at SRS, and observed selected evolutions at reactor and nonreactor facilities.

Other independent organizations and committees have documented required improvements in DOE's radiation protection program, including the Institute for Nuclear Power Operations (INPO) in December 1990, the Advisory Committee on Nuclear Facility Safety in Section 5 of its final report dated November 13, 1991, and the final DOE Operational Readiness Review (ORR) team in its report for Savannah River's K-reactor dated November, 1991.

Primarily as a result of these assessments at Savannah River, but also because of other reviews at Rocky Flats Plant and elsewhere in the defense nuclear facilities complex, the Board has found a need for increased DOE attention in five major areas: (1) DOE management and leadership in radiation protection programs; (2) radiation protection standards and practices at defense nuclear facilities; (3) training and competence of Health Physics technicians and supervisors; (4) analysis of Reported Occurrences and correction of radiation protection program deficiencies; and (5) understanding and attention to radiation protection issues by individuals in DOE and its contractor organizations.

Therefore, the Board recommends that:

1. The Secretary of the Department of Energy expeditiously issue a formal statement of the Department's radiological health and safety policy. Among the subjects that should be considered for inclusion are:

a. The goals of the Department's radiation protection program.

b. Potential sources of guidance and bases for the radiological protection standards adopted by, or to be adopted by, DOE.

c. A reaffirmation, by the Secretary of Energy, of DOE's full commitment to the "As Low As Reasonably Achievable" (ALARA) principle for both occupationally exposed personnel and the general public, which emphasizes the various commitments to radiological protection contained elsewhere in DOE rules, orders, and other requirements.

2. DOE review existing radiation protection training programs, and develop and implement a plan for an expanded training program that includes consideration of the following elements:

a. Comparison with guidance on training contained in "Guide to Good Practice in Radiation Protection Training," Training Resources and Data Exchange (TRADE) Oak Ridge Associated Universities (ORAU) 88/4–99 and "Guidelines for Training and Qualification of Radiological Protection Technicians," Institute of Nuclear Power Operations (INPO), INPO 87–088. While the Board does not necessarily endorse all of the guidance contained in these documents, it believes they are important sources of professional and commercial information on training which can be productively used by DOE in identifying improvements for DOE's programs.

b. Delineation of the level of knowledge, skills, abilities, and other qualifications necessary for each generic radiation protection personnel position within the DOE complex, based on professional and industry standards and guidance. This should include association and/or interaction with professional health physics organizations such as the Health Physics Society and American Board of Health Physics certification for appropriate personnel and managers.

c. Determination of the current level of knowledge of radiation protection managers, professionals, supervisors, and technicians, by means of written, oral, and practical examinations.

d. Delineation of the existing and supplemental training necessary to ensure that radiation protection personnel meet the qualifications of their respective positions.

e. Evaluation of individuals after supplemental training to ensure that they meet the qualifications for their positions.

f. Continuing radiation protection training requirements and retention testing.

g. Delineation of existing and supplemental training for workers, contractors, and subcontractors, other than radiation protection personnel, necessary to ensure adequate radiation protection for those workers.

3. The Department critically examine its existing infrastructure for radiation protection program development and implementation at DOE Headquarters to determine if resource, organizational, or managerial changes are needed to (a) emphasize the priority and importance of the radiation protection program to assuring public health and safety; (b) communicate the importance of the radiation protection program from the highest level of management to all appropriate Department personnel; (c) expand the radiation protection program and increase program resources to facilitate the rapid development and implementation of radiological protection standards throughout the defense nuclear facility complex; and (d) make other changes as are warranted.

4. The Department examine the corresponding radiation protection organizational units at DOE's principal Operations and Field Offices and DOE contractor organizations to determine if those organizations' radiation protection programs' infrastructure, responsibilities, and resources can be strengthened to expedite implementation of radiological

protection standards. A critical aspect of DOE's review should be an assessment of management's involvement and effectiveness in implementing radiation protection programs and management's ability to communicate the steps to be taken to implement an effective radiation protection program to all levels within relevant DOE and contractor units, particularly within line organizations.

5. DOE focus its efforts relating to reporting of occurrences to enhance the usefulness of the Occurrence Reporting (OR) system as a tool for enhancing radiological health and safety at DOE facilities, by emphasizing determination of root causes and management follow-up of lessons learned.

6. DOE compare (a) its operating contractor practices and procedures, and (b) DOE radiological protection standards with the guidance used by other government, commercial, and professional organizations. The documents which DOE should use for this study and comparison include, at a minimum, this listed in the attachment to those recommendation. While the Board does not necessarily endorse any of the listed documents in their entirety, it believes they are important sources of government, commercial, and professional opinion on radiological protection standards, procedures, and practices. As such, they serve as valuable tools for identifying improvements needed in DOE's programs.

7. After completion of the study recommended in item 6, DOE identify any supplemental measures that are necessary or appropriate to compensate for the differences identified between practices which conform to the guidance enumerated above and actual operating contractor practices; and between standards and procedures listed and DOE standards and procedures for radiation protection at defense nuclear facilities.

John T. Conway,
Chairman.

Attachment

1. 29 CFR part 1910 "Occupational Safety and Health Standards".
2. Nuclear Regulatory Commission Regulatory Guides Division 8 Series "Occupational Health".
3. NUREG–0041 "Manual of Respiratory Protection Against Airborne Radioactive Materials".
4. American National Standards Institute (ANSI) Standard Z88.2 of 1980 "Practices for Respiratory Protection".
5. "Guidelines for Radiological Protection at Nuclear Power Stations" Institute of Nuclear Power Operations (INPO), INPO 88–010.
6. International Commission on Radiological Protection (ICRP) Publication 60 "1990 Recommendations of the International Commission on Radiological Protection," 21 Annals of the ICRP No. 1–3, 1991 Pergamon Press.
7. NRC, Draft Regulatory Guide 8.N.1, "Radiation Protection Programs for Nuclear Power Plants" (Implements revised 10 CFR part 20) (Draft RG no. DG–8004 was noticed for public comments in 56 Fed. Reg. 56671, 11/6/91).
8. NCRP Report No. 91 "Recommendations on Limits for Exposure to Ionizing Radiation," National Council on Radiation Protection and Measurements 1987.
9. Other relevant commercial or private standards and practices, including NCRP publications.

Appendix—Transmittal Letter to the Secretary of Energy

December 19, 1991.

The Honorable James D. Watkins,
Secretary of Energy, Washington, DC 20585.

Dear Mr. Secretary: On December 19, 1991, the Defense Nuclear Facilities Safety Board, in accordance with 42 U.S.C. 2286a(5), approved Recommendation 91–6 which is enclosed for your consideration. The Board is aware that the Department has just proposed rules in the Federal Register concerning Radiation Protection for Occupational Workers. 56 FR 64334 (Dec. 9, 1991). Recommendation 91–6 deals with radiation protection issues throughout the DOE defense nuclear facilities complex.

42 U.S.C. 2286d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. The Board believes the recommendation contains no information which is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. 2161–68, as amended, please arrange to have this recommendation promptly placed on file in your regional public reading rooms.

The Board intends to publish this recommendation in the **Federal Register**.

Sincerely,

John T. Conway,
Chairman.

[FR Doc. 91–30886 Filed 12–26–91; 8:45 am]
BILLING CODE 6820–KD–M

[Recommendation 91–5]

Power Limits for K-Reactor Operation at the Savannah River Site

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning power limits for K–Reactor Operation at the Savannah River Site. The Board requests public comments on this recommendation.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before January 27, 1992.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Carole J. Council, at the address above or telephone (202) 208–6400.

Dated: December 20, 1991.

John T. Conway,
Chairman.

Power Limits for K-Reactor Operations at the Savannah River Site

Dated: December 19, 1991.

[Recommendation 91–5]

The Defense Nuclear Facilities Safety Board (the Board) has been conducting an ongoing review of the bases and criteria for the operational plans for the K-reactor at the Savannah River Site. These plans currently include limitation of the power of the reactor to 30 percent of the historical full power, or to approximately 720 megawatts (MW). The information reviewed has been provided to the Board in numerous briefings and documents, including the Savannah River K Production Reactor Safety Analysis Report (WSRC–SA–10003).

The Board concluded on the basis of this information that operation of the K-reactor at a power level not exceeding 30 percent of the nominal historical maximum power would impose no undue risk to public health and safety assuming that all other improvement measures established as necessary for startup have been completed and effectively implemented. In this connection, the Board has been stationing members of its staff and some of its outside experts at the Savannah River Site during the period of restart to monitor the activities during restart and initial power ascension of the K-reactor with the initial reactor configuration.

Information in the K–14–1 Core Operations Report (September, 1991), and some of the Reactor Operations Management Plan (ROMP) closure

packages implies that at a later time the Department of Energy may wish to increase the operating power level of the K-reactor above the 30 percent value. However, the Board is of the opinion that the existing information on the effectiveness of the engineered safety features, especially those that would be relied on in the event of a large loss-of-coolant accident, does not at present support operation at a power level much above the 30 percent value. The Board considers that justification of any increase in power would require further refinement of the thermal-hydraulic evidence on the cooling capability of the emergency cooling systems under accident conditions. Therefore, pursuant to 42 U.S.C. 2286b(d), DOE shall inform the Board well before any decision to increase the reactor's power level above 30 percent of the historical value of its maximum full power. Furthermore, if such an increase in operating power is to be contemplated by the DOE, the Board recommends that:

1. The DOE should conduct more definitive studies on the thermal-hydraulic methodology, criteria, and experimental test program used in analyzing performance of core cooling of the K-reactor during unusual conditions that could prevail during accidents. These studies should more fully reflect prototypical geometry and accident conditions (temperature, flow, pressure, and configuration).

2. Any proposal to operate the K-reactor at a level above the 30 percent value should be supported by accident analysis based on the thermal-hydraulic methodology revised in accordance with the above.

3. The evaluation model for analysis of postulated loss of coolant accidents should be documented and controlled in accordance with the procedures described in 10 CFR 50.46 (1991). Similar controls should be implemented for models used in analyzing non-LOCA accidents.

John T. Conway.

Appendix—Transmittal Letter to the Secretary of Energy

December 19, 1991.

The Honorable James D. Watkins,
Secretary of Energy, Washington, DC 20585.

Dear Mr. Secretary: On December 19, 1991, the Defense Nuclear Facilities Safety Board, in accordance with 42 U.S.C. 2286a(5), approved Recommendation 91–5 which is enclosed for your consideration.

42 U.S.C. 2286d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. The Board believes the recommendation contains no information which is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. 2161–68, as amended, please arrange to have this recommendation promptly placed on file in your regional public reading rooms.

The Board intends to publish this recommendation in the **Federal Register**.

Sincerely,

John T. Conway,
Chairman.

[FR Doc. 91–30885 Filed 12–26–91; 8:45 am]
BILLING CODE 6820–KD–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Teleconference Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Executive Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: January 13, 1992.

TIME: 11 a.m. (e.t.)

PLACE: National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC, 20005–4013, telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III–C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis, and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons. The Executive Committee of the National Assessment Governing Board will meet via teleconference call on January 13, 1992 at 11 a.m. (et). The proposed agenda includes: (1) Discussion of the status of the Memorandum of Understanding detailing the Board's relationship with the Department of Education; (2) review of the Reporting and Dissemination Committee's recommendations regarding the NCES plans for disseminating the new NAEP reports; and (3) review of the National Academy of Education's evaluation of NAEP. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: December 20, 1991.

Diane Ravitch,
Assistant Secretary and Counselor to the Secretary.

[FR Doc. 91–30909 Filed 12–26–91; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Wetlands Involvement Notification for Proposed Construction of an Industrial Waste Landfill at the Department of Energy's Y–12 Plant, Oak Ridge, TN

AGENCY: Department of Energy.

ACTION: Notice of wetlands involvement and opportunity to comment.

SUMMARY: The Department of Energy (DOE) proposes to construct a new landfill for disposal of industrial waste and dewatered bottom ash at the Y–12 Plant on the Oak Ridge Reservation (ORR) in Oak Ridge, Tennessee. All activities related to the proposed project would occur within a restricted area of about 20 hectares (50 acres) on federally owned property.

In accordance with the DOE Regulations for Compliance With Floodplains/Wetlands Environmental Review Requirements (10 CFR part 1022), DOE will prepare a wetlands assessment which will be incorporated into the Environmental Assessment (EA) being prepared for the proposed landfill.

SUPPLEMENTARY INFORMATION: The proposed landfill would provide additional landfill capacity for disposal of industrial wastes generated by the

three major facilities operated at ORR—the Oak Ridge Y-12 Plant, the inactive Oak Ridge Gaseous Diffusion Plant, and the Oak Ridge National Laboratory (ORNL)—and would bring disposal of coal ash from the Y-12 Steam Plant into environmental compliance with the Tennessee Water Quality Control Act. The landfill would be developed on two disposal areas, totaling approximately 20 hectares (50 acres), on the East Chestnut Ridge site. Site preparation would include clearing, grading, and fencing; construction of access roads; and onsite disposal of construction spoils. Construction would require the dredging and filling of two wetland areas. One wetland is permanently flooded; the other wetland contains water only seasonally. The wetlands are classified as palustrine open-water wetlands and are approximately 0.15 acres and 0.05 acres in size.

The proposed action includes the construction of a 0.5-acre replacement pond that would replace the wetland functions of the two existing wetlands. The replacement pond would be located northwest of the proposed landfill site. Run-off from the landfill would be diverted from the replacement pond, and all run-off accepted by the replacement pond would be from offsite.

The proposed action would be carried out in coordination with the Environmental Protection Agency, the U.S. Army Corps of Engineers, and the Tennessee Department of Environmental Conservation. Maps and further information are available from DOE at the address shown below.

DATES: Any comments are due on or before January 13, 1992.

ADDRESS: Send comments to: Joy L. Sager, Environmental Engineer, Waste Management and K-25 Operations Division (EW-92), U.S. Department of Energy, Post Office Box 2001, Oak Ridge, Tennessee 37831-8541, phone number (615) 576-0850. Fax comments to: (615) 576-5333.

Paul D. Grimm,

Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 91-30985 Filed 12-26-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. JD92-02043T; West Virginia-9]

State of West Virginia; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

December 19, 1991.

Take notice that on December 16, 1991, the West Virginia Department of Commerce, Labor and Environmental Resources (West Virginia) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Maxton/Maxon Sandstone (Maxton) in Matheny and McGraws Quadrangles, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The Maxton within the designated area consists of three successive Mauch Chunk Group sandstones, referred to as the "Upper Maxton", the "Middle Maxton" and the "Lower Maxton". The designated quadrangles in the notice are found in Raleigh and Wyoming Counties, West Virginia.

West Virginia previously filed to designate the Maxton Sandstone and the Big Lime as tight formations. On January 23, 1984, West Virginia withdrew the Maxton portion of its recommendation. See Order No. 372 (27 FERC ¶ 61,198), issued May 9, 1984 in Docket No. RM79-76-134 (West Virginia-2).

The notice of determination also contains West Virginia's findings that the referenced portion of the Maxton/Maxon Sand Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR § 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30884 Filed 12-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-161-000, RP89-172-000, CP91-687-000, and CP90-2275-000]

ANR Pipeline Co.; Informal Settlement Conference

December 18, 1991.

Take notice that an informal settlement conference will be convened in this proceeding commencing on Tuesday, January 7, 1992, at 9 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets. The conference will continue through Wednesday, January 8, 1992.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Michael D. Cotleur at (202) 208-1076 or James A. Pederson at (202) 208-2158.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30883 Filed 12-26-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-223-000]

National Fuel Gas Supply Corp.; Order Granting Request for Waiver and Clarifying Prior Order

Issued December 19, 1991.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic.

On December 9, 1991, National Fuel Gas Supply Corporation filed a petition for waiver of the requirement in § 2.55(b) of the regulations that interstate pipelines notify the Commission at least 30 days prior to commencing construction activities to replace existing facilities.[1] We will grant the request.

As a result of statements made by the National Fuel in its request for waiver, we will also clarify a portion of Order No. 555.[2]

[1] Section 2.55(b), 18 CFR 2.55(b) (1990), was amended, effective August 2, 1990, to adopt the notification requirements for replacement of existing facilities. See Interim Revisions to Regulations Governing Construction of Facilities Pursuant to section 311 and Replacement Facilities, Order No. 525, FERC Statutes and Regulations, Regulations Preambles 1986-1990 ¶ 30,895 (1990), and Order No. 525-A, 53 FERC ¶ 61,140 (1990).

[2] Docket No. RM90-1-000, Revisions to Regulations Governing Transportation under

Continued

Request for Waiver

National Fuel states that it owns and operates a 6-inch transmission line, known as Line Q, in Warren County, Pennsylvania that supplies gas to approximately 1,500 people in and around the Town of Tidioute. Tidioute can be served by gas coming out of a small nearby storage field or gas brought in over Line Q. Line Q crosses the Allegheny River.

On August 22, 1991, a valve failed near the south bank of the Allegheny River in the Allegheny National Forest due to the collapse of a hillside.

On August 23, National Fuel filed with the Commission an emergency gas transaction notice under § 284.264(b)(1) that described its plan to effectuate permanent repairs of Line Q within 60 days.[3] After further analysis of the repairs that would be required, on October 31, National Fuel filed an amendment to the emergency gas transaction notice that described a revised replacement plan. In its revised plan, National Fuel states that it intends to replace approximately 330 feet of Line Q with line that goes around the part of the hill having stability problems. National Fuel also states that it intends to bore about 300 feet of replacement line through the bedrock underneath the steepest part of the hillside. National Fuel estimates that the project will cost $132,000.

National Fuel states that Line Q has remained blocked since August 22 because it has not been able to obtain the necessary permission to begin construction activities to repair Line Q in the Allegheny National Forest. The only gas now reaching Tidioute comes from the nearby storage field. National Fuel alleges that "(m)uch of Tidioute" would be without gas service if the line from the storage field were to fail.

On November 6, National Fuel filed a petition for waiver to extend the emergency transaction for another 60 days.[4] (The original 60-day period had expired.) National Fuel, however, states that it is concerned that "if its petition (to extend the emergency transaction) was granted now giving (it) an additional 60 days beginning back in October, it would not be possible to complete the project (especially the 300 foot bore under the hillside) by December 26 (120 days after National (Fuel's) original notice was filed)."[5] Thus, National Fuel has filed this request for waiver of § 2.55(b). National Fuel contends that it will begin replacing facilities on December 9 under the emergency regulations in § 284.261 and will continue replacing facilities after December 26 under § 2.55(b).

National Fuel's petition describes the facilities to be replaced and the environmental mitigation procedures to be used as required by § 2.55(b). We have reviewed National Fuel's petition and determined that good cause exists to grant the request for waiver. Accordingly, National Fuel's waiver request is granted.

Clarification

In its request for waiver, National Fuel states that the "30-day notice requirement was abolished upon the issuance of Order No. 555." National Fuel further states that it "has not filed any 30-day notices for replacement projects commenced under § 2.55(b) after September 20, 1991," the date Order No. 555 was issued.[6]

In the interim rule in Order No. 525, we stated that the "interim rule is effective only until a final rule is issued in Docket No. RM90-1-000."[7] In Order No. 555, we stated that the "interim rule (Order No. 525) expires upon issuance of the final rule in this proceeding."[8] Order No. 555 was scheduled to become effective on November 19. On November 13, 1991, we issued an order that postponed the effective date of Order No. 555 until 30 days after publication in the **Federal Register** of an order on rehearing because of Order No. 555's "broad and potentially significant impact on the natural gas industry."[9]

Order No. 555 was issued on September 20, 1991. Numerous parties, including National Fuel, filed for rehearing of various provisions in that order and many parties requested a stay. We will address these requests in a rehearing order. Since an order on rehearing is contemplated, no final order has been issued in the proceedings in Docket No. RM90-1-000. Consequently, the interim rule in Order No. 525 remains in effect. Thus, interstate pipelines must continue to comply with the 30-day notice requirement in § 2.55(b) and 284.11(b) until a final order on rehearing is issued in Docket No. RM90-1-000 and the final order is made effective. Although this issue has arisen in a specific case, it obviously has generic applicability. Accordingly, we are directing the Secretary of the Commission to arrange for the publication of this order in the **Federal Register**.

The Commission orders:

(A) The notification requirement in § 2.55(b) of the regulations is waived to permit National Fuel to commence the replacement of facilities described in the petition.

(B) The interim rule in Order No 525 will remain in effect until a final order is issued in Docket No. RM90-1-000 and the final order is made effective.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30881 Filed 12-26-91; 8:45 am]

BILLING CODE 6717-01-M

Docket Nos. RP88-67-000, RP88-81-000, RP88-221-000, RP90-119-001, RP91-4-000, and RP91-119-000 (Phase I/Rates)]

Texas Eastern Transmission Corp.; Informal Settlement Conference

December 18, 1991.

Take notice that a conference of the Steering Committee is scheduled to be convened in this proceedng on January 14, 1992, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. Parties may designate anyone they wish for the Steering Committee, but business representatives are encouraged. Participants on the Steering Committee should include individuals who are in a position to commit their parties quickly on matters of substance.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Dennis H. Melvin at (202) 208-0042 or Arnold H. Meltz at (202) 208-0737.

Lois D. Cashell,

Secretary.

[FR Doc. 91-30882 Filed 12-26-91; 8:45 am]

BILLING CODE 6717-01-M

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section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates, Order No. 555, III FERC Statutes and Regulations ¶ 30,927 (September 20, 1991).

[3] Section 284.285(b)(1) provides, in part, that an emergency natural gas transaction is limited to 60 consecutive calendar days and that the transaction may be continued for an additional 60 days under certain conditions.

[4] The emergency transaction was assigned Docket No. EM91-104-000.

[5] National Fuel has now obtained the necessary permission to begin construction activities in the Allegheny National Forest.

[6] National Fuel states that it filed this request for waiver "(o)ut of an abundance of caution."

[7] Order No. 525 at p. 31,812.

[8] Order No. 555 at p. 30,218.

[9] 57 FERC ¶ 61,195 (1991).

Office of Fossil Energy

[FE Docket No. 91-74-NG]

Enron Gas Marketing, Inc.; Order Granting Authorization To Import and Export Natural Gas From and to Canada and Mexico

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of order granting blanket authorization to import and export natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Enron Gas Marketing, Inc., blanket authorization to import up to 900 Bcf of natural gas and to export up to 900 Bcf of natural gas to and from Canada and Mexico over a two-year period beginning on January 1, 1992, the date its current import and export authority expires.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 18, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-30986 Filed 12-26-91; 8:45 am]

BILLING CODE 6540-01-M

[FE Docket No. 91-78-NG]

Tenngasco Corp.; Order Granting Authorization To Import Natural Gas From Canada and Granting Intervention

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of order granting blanket authorization to import natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Tenngasco Corporation blanket authorization to import up to 200 Bcf of natural gas from Canada over a two-year period beginning on the date of first delivery. The order also grants intervention to Great Lakes Transmission Limited Partnership.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC December 18, 1991.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 91-30987 Filed 12-26-91; 8:45 am]

BILLING CODE 6540-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4087-9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 27, 1992.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: RCRA Hazardous Waste Permit Application and Modification, part A (ICR No. 262.04; OMB No. 2050-0034). This is a renewal of a currently approved collection.

Abstract: This ICR discusses the requirements for owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDFs) submitting part A permit applications or part A permit modifications as required by section 3005 of the Resource Conservation and Recovery Act (RCRA). The requirements for submitting and modifying a part A permit application are codified at 40 CFR part 270.

The RCRA permit application asks for the characteristics and conditions of the site and of the hazardous waste handled. The information requested includes general facility information (name, mailing address, location), a description of the hazardous waste activity, a topographic map, and a brief description of the nature of business. The application must be revised if certain changes are made to a facility.

EPA uses the information in the part A permit application for a variety of purposes, to include: Identifying the person(s) legally responsible for hazardous waste activity, determining which facilities require permits under more than one program, assesssing potential for the facility to pollute nearby ground and surface waters, and defining the specific wastes a facility is legally allowed to handle for different purposes.

Burden Statement: The public reporting burden for this collection is estimated to average 12 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Owners and operators of hazardous waste treatment, storage, and disposal facilities.

Estimated Number of Respondents: 825.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 9,942 hours.

Frequency of Collection: One-time permit application.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460, and

Jonathan Gledhill, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: December 19, 1991.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 91-30971 Filed 12-26-91; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4088-5]

Environmental Impact Statement; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5073 or (202) 260-5075.

Availability of Environmental Impact Statements Filed December 16, 1991 Through December 20, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910439, Second Final EIS, SCS, CO, UT, Uintah Basin Unit Expansion Plan, Irrigation Improvement, Colorado River Salinity Control Program, Funding, Uintah and Duchesne, Cos. UT, Due: January 27, 1992, Contact: Francis T. Holt (801) 524–5054.

EIS No. 910440, Final EIS, AFS, WA, Lower Klickitat River Wild and Scenic River Management Plan, National Wild and Scenic Rivers System, Implementation, Columbia River, Gorge National Scenic Area, Klickitat County, WA, Due: January 27, 1991, Contact: Steve Mellor (503) 386–2333.

EIS No. 910441, Final EIS, FHW, CA, Hollister Bypass Construction, CA–156/ Hollister from Union/Mitchell Road to San Felipe Road, Funding, Possible COE Permit, San Benito County, CA, Due: January 27, 1992, Contact: John R. Schultz (916) 551–1310.

EIS No. 910442, Final Supplement, COE, MS, Arkabutla, Enid, Grenda and Sardis Lakes, Operation and Maintenance, Update Information, Channel Restoration on the Tallatchie River and Yalobusha River, MS, Due: January 27, 1992, Contact: W. Harold Lee (601) 495–7104.

EIS No. 910443, Final EIS, APH, AL, AZ, AR, CA, FL, GA, KS, LA, MS, MO, NM, NC, OK, SC, TN, TX, VA, National Boll Weevil Cooperative Control Program, Implementation and Funding, AL, AZ, AR, CA, FL, GA, KS, LA, MS, MO, NM, NC, OK, SC, TN, TX, VA, Due: January 27, 1992, Contact: Sydney E. Cousins (301) 436–8247.

EIS No. 910444, Second Draft Supple, NPS, CA, Yosemite National Park, General Management Plan (GMP), Implementation, Concession Services Plan (CSP), Tuolumne, Mariposa and Madera Counties, CA Due: January 28, 1992, Contact: Michael Finley (209) 372–0204.

EIS No. 910445, Final EIS, AFS, UT, WY, Westside Analysis Area, Multiple Use Management Plan, Implementation, Wasatch-Cache National Forest, Summit County, Utah and Uinta County, WY, Due: January 27, 1992, Contact: Wayne Anderson (307) 782–6555.

EIS No. 910446, Final EIS, AFS, CA, Modoc National Forest, Land and Resource Management Plan, Implementation, Modoc, Lassen and Siskiyou Counties, CA, Due: January 27, 1992, Contact: Douglas G. Smith (916) 233–5811.

EIS No. 910447, Final Supplement, UAF, WY, NB, Peacekeeper System Deployment (Minuteman III Missile Replacement) Additional Information, Near Warren AFB, Laramie, Goshen and Platte Counties, Wyoming and Scotts Bluff, Banner and Kimball Counties, Nebraska, Due: January 27, 1992, Contact: Ltc. Tom Bartol (714) 382–2003.

EIS No. 910448, Draft EIS, IBR, CA, San Luis Unit Drainage Program, Central Valley Project, Implementation, Funding and Possible Section 404 Permit, San Joaquin River, Fresno, Merced and Kings Counties, CA, Due: March 25, 1992, Contact: Dr. Wayne Deason (916) 776–9336.

Amended Notices

EIS No. 910416, Final EIS, COE, GA, SC, Savannah Harbor Comprehensive Study and Harbor Deepening, Updated and New Information, Implementation, Chatham County, GA and Jasper County, SC, Due: January 21, 1992, Contact: David Crosby (912) 944–5781.

Published FR- 11–29–91—Review period extended.

Dated: December 23, 1991.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 91–30993 Filed 12–26–91; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4088–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 9, 1991, through December 13, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1991 (56 FR 14096).

Draft EISs

ERP No. D–AFS–L82011–ID Rating EC2, Coeur d'Arlene Nursery Pest Management, Implementation, Idaho Panhandle National Forests, Kootenai County, ID.

Summary: EPA has environmental concerns regarding the vulnerability of the Rathdrum Spokane Aquifer to chemical contamination. Additional information pertaining to the characteristics of the aquifer, the potential for contamination of wells and planned best management practices which would prevent the leaching of agricultural chemicals into the ground water has been requested.

ERP No. D–BOP–D81021–WV Rating EC2, Beckley Federal Correctional Institution, Construction and Operation, Raleigh County, WV.

Summary: EPA expressed concern about wetland and habitat impact and requested that discussions on these issues be expanded in the final document. EPA also requested additional information on alternatives.

ERP No. D–FHW–E40741–FL Rating EC2, Wonderwood Connector Transportation Facility, Construction, connecting the Dame Point Expressway (FL–9A) in the Arlington District to Mayport Road (FL–101), Funding, Section 10 and 404 Permits and NPDES Permit, City of Jacksonville, Duval County, FL.

Summary: EPA had concerns with wetland and noise impacts associated with the four proposed alternative alignments. Additional information on wetland impacts and wetland and noise mitigation was recommended.

ERP No. D–USA–A21035–OR Rating LO1, Umatilla Depot Activity, On-Site Facility for Disposal of Stockpiled Chemical Agents and Munitions, Construction and Operation, Morrow and Umatilla Colunties, OR.

Summary: EPA did not identify any potential environmental impacts requiring substantive changes to the proposal, however, EPA recommended additional clarifying language which would strengthen the final EIS.

Final EISs

ERP No. F–NPS–E61066–FL, Big Cypress National Preserve, General Management Plan, Implementation, Collier, Dade, and Monroe Counties, FL.

Summary: EPA's concern with respect to protection of cultural resources during prescribed burning and air quality issues at oil/gas production sites were addressed in the Final EIS. EPA requested the final general management plan which will detail exotic plant control using herbicides and burning.

ERP No. FS–NSF–A84024–00, U.S. Antarctic Program Continued Operation, Updated Information, Implementing the Safety, Environment, and Health (SEH) Initiative, Antarctica.

Summary: EPA continues to be concerned about the lack of specific information on schedules for initiating and completing the studies identified as mitigation measures to be implemented under the preferred alternative. EPA

recommended that the Record of Decision include this information and a process for tracking the progress of the mitigation.

Dated: December 23, 1991.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 91-30994 Filed 12-27-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4088-2]

Establishment of a Computer Matching Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, as amended (the Act), and the Office of Management and Budget's (OMB) guidelines implementing the Act, EPA is giving notice of the establishment of a computer matching program.

EFFECTIVE DATE: This matching program will be effective on February 25, 1992.

ADDRESSES: Comments or inquiries may be addressed to Stephen S. Hufford, Chief, Information Management Branch, Information Management and Services Division (PM-211D), Office of Information Resources Management, Room 2003 Waterside Mall, EPA, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Stephen S. Hufford, telephone (202) 260-5914.

SUPPLEMENTARY INFORMATION: In accordance with the Computer Matching and Privacy Protection Act of 1988, Public Law No. 100-503, as amended, OMB's Computer Matching Guidelines, 54 FR 25818 (June 19, 1989), and OMB Bulletin 89-22 (September 29, 1989), EPA is giving notice of the establishment of a matching program. This matching program is described as follows:

(1) *Name of Source Agency*: EPA.

(2) *Name of Recipient Agency*: Illinois Department of Public Aid (IDPA).

(3) *Beginning and Ending Dates of the Matching Program*: The matching program will begin on February 25, 1992. The matching program will continue until the purpose of the matching program is accomplished, or 18 months from the date the matching program was approved by EPA's Data Integrity Board, whichever comes first.

(4) *Description of the Matching Program*: The purpose of the matching program is to determine whether EPA employees are fraudulently or otherwise improperly receiving IDPA public assistance. If, as a result of the matching program, EPA and IDPA determine that an EPA employee fraudulently or otherwise improperly obtained IDPA public assistance, EPA and IDPA intend to initiate appropriate criminal, civil, and/or administrative remedies against that employee. Among other remedies, IDPA could terminate or reduce benefits and/or EPA could reprimand, suspend, or fire the employee.

The legal authorities for conducting the matching program are Illinois Revised Statutes, Chapter 23 (1988), under which IDPA is authorized to administer and monitor public assistance and food stamp programs, and the Inspector General Act of 1978, as amended, 5 U.S.C. app. (1988), under which the EPA Office of Inspector General (OIG) is authorized to conduct investigations and audits to prevent and detect fraud, waste, and abuse.

The EPA Privacy Act system of records that will be used in the matching program is "EPA-1, Environmental Protection Agency Payroll System (EPAYS)," which contains payroll and personnel information for all current EPA employees (approximately 17,000 records). The IDPA system of records that will be used in the matching program is the IDPA Client Data Base Files, which contains information on all individuals who are receiving General Assistance, Aid to Families with Dependent Children, and food stamps from IDPA (approximately 1.3 million records).

(5) *Name and Address of Contact for Public Inquiries*: Stephen S. Hufford, Chief, Information Management Branch, Information Management and Services Division (PM-211D), Office of Information Resources Management, Room 2003 Waterside Mall, EPA, 401 M Street, SW., Washington, DC 20460.

EPA's Data Integrity Board approved this computer matching program on November 21, 1991.

Dated: December 13, 1991.

Christian R. Holmes,

Acting Assistant Administrator for Administration and Resources Management.

[FR Doc. 91-30972 Filed 12-26-91; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

CBS Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 16, 1992.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. CBS Bancshares, Inc., Spencer, Tennessee; to acquire an additional 52.5 percent of the voting shares of First State Bank, Maynardville, Tennessee, for a total of 56.25 percent.

2. Crescent Banking Company, Jasper, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Crescent Bank and Trust Company, Jasper, Georgia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Old National Bancorp*, Evansville, Indiana; to merge with U.S.B. Corporation, Washington, Indiana, and thereby indirectly acquire United Southwest Bank, Washington, Indiana.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. West River Holding Company, Inc., Hettinger, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of West River State Bank, Hettinger, North Dakota.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. United Nebraska Financial, Grand Island, Nebraska; to acquire 86.4 percent of the voting shares of Citizens Bank and Trust Company, Columbus, Nebraska.

Board of Governors of the Federal Reserve System, December 20, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-30912 Filed 12-26-91; 8:45 am]

BILLING CODE 6210-01-F

CBT Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank's Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reaons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 16, 1992.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. CBT Corporation, Paducah, Kentucky; Paducah Bank Shares, Inc., Paducah, Kentucky; and Peoples First Corporation, Paducah, Kentucky; to engage *de novo* through their subsidiary, First Park Partners, Paducah, Kentucky, in acquiring, developing and selling and/or leasing parcels of a tract of commercial real property in order to promote community welfare pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in McCracken County, Kentucky.

Board of Governors of the Federal Reserve System, December 20, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-30913 Filed 12-26-91; 8:45 am]

BILLING CODE 6210-01-F

Wayne M. Miller, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 16, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Wayne M. Miller, Dundee, Illinois, and Robert Daniel, Waterman, Illinois; to acquire 55.21 percent of the voting shares of Waterman Bancshares, Inc., Waterman, Illinois, and thereby indirectly acquire Waterman State Bank, Waterman, Illinois.

2. Peter M. Mott, to acquire 13.74 percent of the voting shares of Kingston State Bank, Kingston, Illinois.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Terry Gerber, Exeland, Wisconsin, and Franz Gerber, Bruce, Wisconsin; to acquire 60 percent of the voting shares of Cameron Bancorp, Inc., Cameron, Wisconsin, and thereby indirectly acquire Community Bank of Cameron, Cameron, Wisconsin.

Board of Governors of the Federal Reserve System, December 20, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-30914 Filed 12-26-91; 8:45 am]

BILLING CODE 6210-01-F

National City Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than January 16, 1992.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. National City Corporation, Cleveland, Ohio; to acquire B&L Consultants, Inc., Norwood,

Massachusetts, Norwood, Massachusetts, through its wholly-owned subsidiary, National Processing Company, Inc., and will be a financial services company providing payment, data processing services (freight payment and accounts payable) pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Trans Financial Bancorp, Inc., Bowling Green, Kentucky; to acquire First Federal Savings Bank of Tennessee, Tullahoma, Tennessee, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in the State of Tennessee.

2. Trans Financial Bancorp, Inc., Bowling Green, Kentucky; to acquire Maury Federal Savings Bank, Columbia, Tennessee, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted in the State of Tennessee.

Board of Governors of the Federal Reserve System, December 20, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-30915 Filed 12-26-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Current Status of the Vessel Sanitation Program and Experience to Date With the Program: Meeting

The National Center for Environmental Health and Injury Control (NCEHIC) of the Centers for Disease Control (CDC) announces the following meeting.

Name: Current Status of the Vessel Sanitation Program and Experience to Date with the Program—Public meeting between CDC and the cruise ship industry, private sanitation consultants, and other interested parties.

Place: Miami Port Authority Passenger Terminal No. 10, 1007 North America Way, Miami, Florida.

Time and Date: 9 a.m.—Wednesday, January 29, 1992.

Status: Open.

Matters To Be Discussed: Current Status of the Vessel Sanitation Program and experience to date.

During the past 5 years, as part of the revised Vessel Sanitation Program, CDC has conducted a series of public meetings with members of the cruise ship industry, private sanitation consultants, and other interested parties. This meeting is a continuation of that series of public meetings.

For a period of 15 days following the meeting, through February 13, 1992, the official record of the meeting will remain open so that additional material or comments may be submitted to be made part of the record of the meeting.

The meeting will be open to the public for participation, comment, and observation, limited only by space available.

Contact Person for Further Information: Additional information concerning the meeting may be obtained from: Linda Anderson, Chief, Special Programs Group (F29), NCEHIC, CDC, 1600 Clifton Road, NE., Atlanta Georgia 30333, telephone 404/488-4595 or FTS 236-4595.

Dated: December 20, 1991.

Elvin Hilyer

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 91-30917 Filed 12-26-91; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Statement of Organization, Functions, and Delegations of Authority; Office of Criminal Investigations et al.

Part H, chapter HK (formerly chapter HF) (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of authority for the Department of Health and Human Services (56 FR 29484, June 27, 1991) is amended to reflect the establishment of substructure under the recent alignment of the Food and Drug Administration (FDA). As one of the oldest Federal regulatory agencies charged with consumer protection, FDA has investigated criminal activities for many years. However, evidence of increased criminal activity in product areas regulated by FDA has made it necessary for the Agency to establish an organizational component which will focus primarily on criminal investigations.

As part of this proposal, the functional statements for the Office of Enforcement, the Office of Regional Operations, and the Regional Field Offices within ORA will be revised to indicate their primary responsibility for noncriminal investigations.

Under section HK-B, Organization:

1. Insert the following new paragraphs Under the Office of Operations (HKB), Office of Regulatory Affairs (HFA4) reading as follows:

Office of Enforcement (HFA4B). Advises and assists the Associate Commissioner and other key officials on regulations and compliance matters that have an impact on policy development, implementation, and long-range program goals.

Coordinates, interprets, and evaluates the Agency's overall compliance efforts; as necessary, establishes compliance policy and recommends policy to the Associate Commissioner.

Stimulates an awareness within the Agency of the need for prompt and positive action to assure compliance by regulated industries; works to assure an effective and uniform balance between regulatory compliance and Agency responsiveness to consumer needs.

Acts as liaison with other Federal agencies on Agency compliance matters.

Evaluates and coordinates proposed legal actions to ascertain compliance with regulatory policy and enforcement objectives.

Directs and coordinates with the Office of Regional Operations (ORO), other Agency components, and Office of the General Counsel, new or novel cases which may be precedent-setting.

Resolves appeals when proposed compliance actions are disapproved by the centers or the Office of the General Counsel.

Coordinates development of the Agencywide bioresearch monitoring activities; monitors compliance activities to assure uniform application of compliance policy.

Office of Regional Operations (HFA4C). Coordinates and manages all Agency field operations, except certain criminal investigations, on behalf of the Associate Commissioner; develops, issues, approves, or clears proposals and instructions affecting field activities; serves as the central point within the Agency through which Headquarters offices obtain field support services.

Establishes field compliance and enforcement posture, based on Agency policy.

Develops and/or recommends to the Associate Commissioner policy, programs, and plans for activities between the Agency and State and local agencies; administers the Agency's overall Federal-State program and policy; coordinates the program aspects of FDA contracts with State and local counterpart agencies.

Coordinates field consumer affairs and information programs; distributes timely information to the field; coordinates activities with Agency counterpart organizations.

Serves as the Agency focal point for activities relating to the Federal Medical Products Quality Assurance Program and maintains liaison with other Government agencies procuring medical supplies; issues final administrative approval for quality assurance of specific products/firms.

Evaluates the overall management and capabilities of the Agency's field organization; initiates action to improve the management of field activities and coordinates the formulation and management of career development plans.

Implements nationwide information storage and retrieval systems for data originating in the field offices.

Develops and/or recommends to the Associate Commissioner policy, program, and plans for applied research that relate to Agency enforcement problems that will be conducted by field installations; coordinates such research efforts with appropriate Agency components.

Directs and coordinates the Agency emergency preparedness and civil defense programs.

Provides other Agency components with laboratory support in various highly specialized areas.

Recommends priorities for all field construction, repair, improvement, and renovation and recommends short- and long-range field facility utilization plans.

Office of Criminal Investigations (HFA4D). Advises and assists the Associate Commissioner and other key officials on regulations and criminal matters that affect the Agency.

Directs, plans, and develops criminal investigation activities in coordination with other Agency components and with other Federal, State, and local law enforcement agencies.

Develops, coordinates, and implements Agency policy related to criminal investigations.

Initiates and conducts criminal investigations under all statutes administered by the Food and Drug Administration, through area offices located throughout the United States; coordinates assignments involving undercover and surveillance personnel and activities.

Assures coordination of criminal investigation activities with FDA Regional Field Offices and District Offices and adherence to Agency's enforcement priorities; develops and maintains cooperative relationships with field and Headquarters components.

Provides recommendations, to the Office of General Counsel on referrals of criminal cases to the Department of Justice for further investigation and/or prosecution, or directly to the U.S. Attorney when such direct reference is authorized.

Develops automated data processing systems to be used for criminal investigations and related enforcement matters.

Develops, reviews, and approves training programs for FDA's criminal investigators and related personnel.

Participates in Grand Jury investigations and serves as agents of the Grand Jury.

Regional Field Offices (HFRN, HFRA, HFRS, HFRM, HFRW, HFRP). The Regional Office is the primary organizational component for each region and is organized into district offices, and/or specialized centers. A Regional Field Office is under the direction of a Regional Food and Drug Director who is the primary executive of the Agency within the region. The Regional Food and Drug Director is responsible for the effective implementation of all activities required to assure that regulated establishments within the region comply with laws and regulations enforced by FDA.

Within FDA Regional Offices, functions performed are as follows:

Provides managerial driection to the Agency's non-criminal field programs to achieve compliance with the laws and regulations for which the Agency is responsible through appropriate regulatory action.

Develops and maintains cooperative relationships with the Agency's Office of Criminal Investigations personnel; provides technical expertise from investigations, compliance, and laboratory staffs in suppport of criminal investigations.

Manages resource allocations, money, and people.

Manages a field management informaton system.

Coordinates Agency activities with related operations of the PHS Regional Health Administrator and the Department's Regional Director.

Develops and maintains cooperative relationships with State, local and other Federal agencies; serves on interagency councils; encourages improved State and local consumer protection programs pertinent to Agency-enforced laws and regulations.

Assists State and local officials in the development of uniform legislation, codes, and regulations.

Represents the Agency, or provides policy and direction for Agency representation, in dealing with public and private organizations, such as governmental agencies, volunteer agencies, educational institutions, industry and professional associations, and the local media within the region.

Plans and evaluates program activities; measures accomplishments against annual field workplan objectives; initiates management and program analysis; manages a Quality Assurance Program; and advises Headquaters regarding strategy changes needed to reach existing or modified objectives.

Advises Headquarters on new or emerging problems and trends, future program needs and priorities, State legislative activities, manpower, equipment, financial needs, and long-range planning.

Coordinates emergency activities by maintaining liaison with Department components, and other Federal departments and agencies and by providing assitance to States and localities in the event of a national disaster or other emergency.

Advises, commissions, and certifies State personnel; monitors and evaluates State programs in milk, shellfish, food service sanitation, and radiation safety.

Determines acceptability of items subject to the Agency's jurisdiction, for entry into this country through examination of available records, inspection of the product, and/or by sampling and laboratory examination of the product followed by release, detention, and/or rejection.

Conducts investigations and inspections, and analyzes samples of foods, drugs and other commodities for which the Agency has regulatory responsibility.

Conducts administrative hearings on alleged violations, and initiates appropriate enforcement action.

Recommends legal action to Headquarters, to the Office of the General Counsel, or to the responsible U.S. attorney (when such direct reference is authorized), and assists in implementing approved action.

Detains medical devices and, in cooperation with USDA, detains meat, poultry, or egg products that may be violative.

Manages recalls and performs follow-up activities to assess recall effectiveness and prevent recurrences.

Condusts research to develop and refine analytical methodology and to explore new systems of analysis, maintains liaison with scientists and scientific bodies with interest pertinent to laboratory activities.

Manages, evaluates, and audits the program aspects of Federal-State Contracts.

Dated: December 15, 1991.

David A Kessler,

Commissioner of Food and Drugs.

[FR Doc. 91-30952 Filed 12-26-91; 8:45 am]

BILLING CODE 4160-10-M

Health Care Financing Administration

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice of New System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "Uniform Clinical Data Set (UCDS)," HHS/HCFA/HSQB No. 09-70-1516.

We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the "routine uses" portion of the system be published for comment, HCFA invites comments on all portions of this notice.

DATES: HCFA filed a new system report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on December 27, 1991.

The new system of records, including routine uses, will become effective 60 days from the date this notice is published in the **Federal Register** (January 27, 1992) unless HCFA receives comments which require alteration to the system.

ADDRESSES: The public should address comments to Mr. Richard A. DeMeo, HCFA Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, 2-F-2 East Low Rise, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT:

Ms. Michael McMullan, Office of Peer Review, Health Standards and Quality Bureau, Health Care Financing Administration, 2-D-2 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207, 301-966-6851

or

Mr. Paul Elstein, Office of Peer Review, Health Standards and Quality Bureau, Health Care Financing Administration, 2-D-2 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207, 301-966-6885.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, notice is hereby given that the Health Care Financing Administration (HCFA) proposes to initiate a new system of records. This system will be the Uniform Clinical Data Set (UCDS). HCFA will collect a standard set of data about each case selected for Utilization and Quality Control Peer Review Organization (PRO) review when the initial review is conducted using the UCDS system. The short-term acute-care hospital stays of a random sample of beneficiaries enrolled in the Medicare program will be selected for review. When the UCDS system is fully implemented (now estimated for October 1993), approximately 1.3 million stays each year will be reviewed.

The UCDS automated system was developed for use by PROs in their initial review of cases selected for examination. It consists of two parts, the data acquisition system and the case finding algorithms. The data acquisition software is interactive and designed to be used by trained abstractors to collect data from a patient's medical record using desktop or portable computer hardware. The data collected describe the clinical characteristics of the patient at the time of hospital admission, processes of care and outcomes on the date of discharge from the hospital. The data also include certain management information and beneficiary sociodemographic elements. All data elements are drawn directly from the medical record maintained by the provider. The algorithms used by the PROs are an automated systematic method for reaching decisions regarding the quality and appropriate ultilization of care received by the beneficiary. The algorithms, using the data abstracted from the medical record, help decide what further action, if any, should be taken by the PRO on the case. PRO actions beyond the initial review will be identical to those currently in use. The PROs will forward to HCFA data on all cases selected for UCDS review regardless of the findings of that review. When those data are received and entered in the UCDS Data System, they will be subject to the Freedom of Information and Privacy Acts. (These Acts do not apply to data in the PROs' possession.)

The UCDS is established under the authority of section 1866(a)(1)(F) of the Social Security Act which requires hospitals participating in the Medicare program to have an agreement with a PRO for the latter to review various aspects of the hospital's activities; section 1154(a) of the Social Security Act, which requires that the Utilization and Control Peer Review Organizations (PROs), under contract to the Secretary, will review the care provided by physicians and other health care practitioners and providers under Medicare; section 1862(g) of the Social Security Act, which requires the Secretary to enter into contracts with PROs to assist in making certain types of determinations in the Medicare program and sections 1874 (a) and (b) of the Social Security Act, which authorizes the Secretary to administer the Medicare program through contracts with others, including contracts for procuring data as may be necessary in carrying out his functions under the Medicare statute. The system is subject to the Freedom of Information regulations at 45 CFR part 5.

The Privacy Act permits HCFA to disclose information without the consent of the individual for "routine uses"—that is, disclosure for purposes that are compatible with the purpose for which we collect the information (5 U.S.C. 552a(b)(3)). The proposed routine uses in the new system meet the compatibility criteria since they are consistent with the purpose of the system to promote the effective administration and operation of the Medicare program, to maintain the integrity of the Medicare program, and to assess the medical necessity for, appropriateness of, setting of, and quality of care received by Medicare beneficiaries. We anticipate that disclosure under the routine uses will not result in any unwarranted adverse effects on personal privacy.

Dated: December 18, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

09-70-1516

SYSTEMS NAME:

Uniform Clinical Data Set (UCDS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Health Care Financing Administration (HCFA), Bureau of Data Management and Strategy, Office of Computer Operations, HCFA Data Center, Lyon Building, 7131 Rutherford Road, Baltimore, Maryland 21207.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A record will be generated for acute care hospital stay of a Medicare beneficiary which is randomly selected for review by a Utilization and Quality Control Peer Review Organization (PRO).

CATEGORIES OF RECORDS IN THE SYSTEM:

A single record for each case reviewed using the UCDS automated system will be maintained. Each record contains data in five general categories—(1) management information, (2) sociodemographic data on the beneficiary, (3) clinical characteristics of the beneficiary at admission, (4) processes of care during the stay and (5) outcomes/status at discharge. Examples of the data collected in each of these categories follow:

• *Management Information*—Peer Review Organization Identifier (PROID), hospital identifier, the beneficiary's hospital medical record number, his Health Insurance Claim (HIC) number, admission and discharge dates, discharge disposition code, attending physician identifier, date of birth, date of death (when death occurred in the institution) and sex.

• *Sociodemographic Data*—Admission caregiver, patient race, occupational status, insurance source, and current ambulatory care.

• *Clinical Condition at Admission*—Height, weight, and vital signs, medication history such as current medications at admission, history of drug/dye allergy or poisoning, history of radiation exposure, and medications administered in emergency room; history of permanent anatomic changes such as major organ removal, amputation of major limb, organ transplant, and congenital organ absence; history and physical including chronic diseases and/or conditions and evidence of current diseases and/or conditions; results of certain diagnostic tests conducted prior to admission.

• *Processes of Care*—Principal and secondary diagnoses; laboratory findings; results of selected diagnostic tests such as x-ray, CT scan, EKG, cardiac catheterization, EEG, pulmonary function, etc.; endoscopic procedures; operative episodes including the date of operation, anesthetic type, anesthetic risk, vascular access lines, surgical wound classification, adverse intra-operative occurrences, and tissue findings; noninvasive treatment interventions such as blood products, inhalation therapy, professional services, medication therapy, and delivery systems for medications; hospital course including special care unit days, total number of special care unit episodes, "do not resuscitate" order and date, adverse occurrences, trauma suffered in hospital, infections, and prolonged stay.

• *Outcome/Discharge Status*—Discharge vital signs; discharge exam finding; discharge tests; discharge planning including activities of daily living, caregiver, follow-up plans, discharge therapies, discharge medications, and discharge diagnoses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established under the authority of section 1866(a)(1)(F) of the Social Security Act, which requires hospitals participating in the Medicare program to have an agreement with a PRO for the latter to review various aspects of the hospital's activities; section 1154(a) of the Social Security Act, which requires the Utilization and Quality Control Peer Review Organizations (PROs), under contract to the Secretary, to review the care provided by physicians and other health care practitioners under Medicare; section 1862(g) of the Social Security Act, which requires the Secretary to enter into contracts with PROs to assist in making certain types of determinations in the Medicare program and section 1874 (a) and (b) of the Social Security Act, which authorize the Secretary to administer the Medicare program through contracts with others, including contracts for procuring data as may be necessary in carrying out functions under the Medicare statute and regulations at 45 CFR part 5b.

PURPOSE OF THE SYSTEM:

To collect a standard set of data about each hospitalization selected for UCDS review in order to make PRO review more consistent from State to State. To provide for the collection of data which can be used to monitor the care provided by the Medicare program in a more uniform way.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures may be made:

1. To a congressional office from the record of an individual in response to an inquiry from the congressional office at the request of that individual.

2. To an individual or organization for a research, evaluation or epidemiological project related to studying the effectiveness of health care or to the improvement of the quality of health care if HCFA:

(a) Determines that the use or disclosure does not violate legal limitations under which the record was provided, collected, or obtained;

(b) Determines that the purpose for which the disclosure is to be made:

(1) Cannot be reasonably accomplished unless the record is provided in individually identifiable form;

(2) Is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring, and

(3) There is reasonable probability that the objective for the use would be accomplished.

(c) Requires the information recipient to:

(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;

(2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient presents an adequate justification of a research or health nature for retaining such information; and

(3) Make no further use or disclosure of the record except:

(a) In emergency circumstances affecting the health or safety of any individual;

(b) For use in another research project, under these same conditions, and with written authorization of HCFA;

(c) For disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit; or

(d) When required by law.

(d) Secures a written statement attesting to the information recipient(s) understanding of and willingness to abide by these provisions.

3. The Department of Justice, to a court or other tribunal, or to another party before such tribunal, when

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any

of its components, or is a party to litigation, or has an interest in such litigation, and HHS determines that the sue of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

4. To a contractor for the purpose of collating, analyzing, aggregating, or otherwise refining or processing records in or refining processes associated with the operation of this system or for developing, modifying and/or manipulating ADP software. Data will also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance for ADP or telecommunications systems containing or supporting records in the system. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

5. To a third party where:

(a) HCFA needs information from the third party to verify information relating to program integrity, quality of care, and evaluation and measurement of system activities;

(b) The party to whom disclosure is to be made has, or is reasonably expected to have such information, and disclosure is needed in order to obtain the information; and

(c) HCFA determines that the purpose of disclosure is compatible with the purposes for which the records were collected.

6. To a Utilization and Quality Control Peer Review Organization or an entity under contract to HCFA or the Department acting in a manner consistent with maintaining the integrity of the Medicare program if HCFA determines that disclosure of beneficiary-specific information is necessary or relevant to an official investigation or litigation regarding a specific case, and if HCFA determines:

(a) That the use or disclosure of information does not violate legal limitations under which the record was provided, collected, or obtained; and

(b) That the purpose for which disclosure is to be made:

(1) Is compatible with the purposes for which the records were collected;

(2) Cannot be reasonably accomplished unless the record is provided in individual identifiable form; and

(3) Is of sufficient importance to warrant any effect on the privacy of the individual that disclosure of the record might bring.

(c) That adequate safeguards have been instituted so as to protect the confidentiality of the data and prevent unauthorized access to it; and

(d) That the appropriate procedures, format, and media will be used for the data disclosure process.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained at the system location site in magnetic media (e.g., magnetic tape and computer disks).

RETRIEVABILITY:

At a minimum, the data in the system are retrieved by the PRO identifier, the Health Insurance Claim (HIC) number (which is derived from the Social Security number) and the provider identifier. Data could be retrieved by other identifiers such as the attending physician identifier, the principal diagnosis, age, sex, etc.

SAFEGUARDS:

Safeguards for automated records have been established in accordance with the Department of HHS' Information Resources Management Manual, "Part 6, Automated Information Systems Security." This includes maintaining the records in a secure enclosure. Access to specific records is limited to those who have a need for them in the performance of their official duties.

RETENTION AND DISPOSAL:

Records are maintained in the system with identifiers as long as needed for program research.

SYSTEM MANAGER AND ADDRESS:

Director, Health Standards and Quality Bureau, Health Care Financing Administration, Room 2–D–2 Meadows East Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

To determine if a record exists, the individual should write to the system manager at the address indicated above and specify his or her HIC number.

RECORD ACCESS PROCEDURE:

Same as notification procedure. Requestors should also reasonably specify the record contents being sought. (These access procedures are in accordance with Department Regulations (45 CFR 5b.5(a)(2)).)

CONTESTING RECORD PROCEDURE:

Contact the system manager named above and reasonably identify the record and specify the information to be contested, and state the corrective action sought and your reasons for requesting the correction, along with information to show how the record is inaccurate, incomplete, untimely, irrelevant, or otherwise in need of correction. (These procedures are in accordance with Department Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORIES:

These records will be generated by the PRO as a result of its review of the medical record associated with selected inpatient hospital stays of Medicare beneficiaries. The data source will be the medical record of that stay provided by the institution.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 91–30922 Filed 12–26–91; 8:45 am]
BILLING CODE 4120–03

National Institutes of Health

National Cancer Institute; Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Scientific and Commercial Development of BUDR/IUDR as an Anticancer Agent

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) seeks a pharmaceutical company which can effectively pursue the clinical development of BUDR/IUDR for the treatment of cancer. The National Cancer Institute has established that this agent may be effective in treating several types of cancers. The selected sponsor will be awarded a CRADA for the development of this agent.

ADDRESSES: Questions about this opportunity may be addressed to Dale Shoemaker, Ph.D., Executive Secretary, CRADA Selection Committee, Division of Cancer Treatment, NCI, EPN, room 718, Bethesda, Maryland 20892 (301) 496–7912, from whom further information including a summary copy of the preclinical and clinical data may be obtained.

DATE: In view of the important priority of developing new drugs for the treatment of cancer, this notice is active until February 10, 1992.

SUPPLEMENTARY INFORMATION: The Government is seeking a pharmaceutical company which, in accordance with the requirements of the regulations governing the transfer of Government-developed agents (37 CFR 404.8), can develop BUDR/IUDR to a marketable status to meet the needs of the public and with the best terms for the Government. BUDR and IUDR are halogenated pyrimidines which can substitute for thymidine during DNA synthesis. Both agents are thought to effect radiosensitization in tumor cells through induction of DNA damage secondary to their incorporation into DNA. Clinical studies are underway with both agents to define the optimal dose, route and schedule of administration for use as a radiosensitizer. In addition, clinical studies are ongoing to study the cell cycle characteristics of tumor cells and to correlate these characteristics with prognosis and response to therapy. BUDR and IUDR are not covered by patents and may classify as orphan agents.

The Division of Cancer Treatment, NCI, is interested in establishing a CRADA for this agent with a pharmaceutical company to assist in the continuing development of the agent. The Government will provide all available expertise and information to date and will jointly pursue new clinical studies as required giving the pharmaceutical company exclusive rights to the New Drug Application-directed clinical data from Phase II/III trials. The successful pharmaceutical company will provide the necessary financial and organizational support to complete further development of this agent to establish clinical efficacy and possible commercial status.

The role of the Division of Cancer Treatment, NCI, includes the following:

1. The Government will provide information concerning pharmaceutical manufacturing and controls including dosage form development data.

2. The Government will allow the pharmaceutical company to review and cross-file the Division's IND for the agent; it is likely that the pharmaceutical company would wish to undertake clinical studies independently.

3. The Government will make the Division's IND for the agent proprietary under such circumstances and the IND data will be offered exclusively to the selected pharmaceutical company.

4. The Government will continue the preclinical and clinical development of this agent under its extramural clinical trials network.

The role of the successful pharmaceutical company for the agent under a CRADA will include the following:

1. Provide and implement plans to independently secure future continuing supplies of the agent to assure continued preclinical and clinical development.

2. Provide plan and support for clinical development leading to FDA approval for marketing.

Criteria for choosing the pharmaceutical company include the following:

1. Experience in the preclinical and clinical development of anticancer agents.

2. Experience and ability to produce, package, market and distribute pharmaceutical agents in the United States and to provide the agent at a reasonable price.

3. Experience in the monitoring, evaluation and interpretation of the data from investigational agent clinical studies under an IND.

4. A willingness to cooperate with the Public Health Service in the collection, evaluation, publication and maintenance of data from clinical trials of the investigational agent.

5. A willingness to cost share in the development of the agent. This includes the acquisition of bulk material and formulation of clinical products in adequate amounts as needed for future clinical trials and marketing.

6. An agreement to be bound by the DHHS rules involving human and animal subjects.

7. The aggressiveness of the development plan, including the appropriateness milestones and deadlines and clinical development.

8. Provisions for equitable distribution of patent rights to any inventions. Generally the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, nonexclusive, royalty-free license to the Government (when a company employee is the sole inventor) or (2) an exclusive or nonexclusive license to the company on terms that are appropriate (when the Government employee is the sole inventor).

Dated: December 6, 1991.

Reid Adler,

Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 91-30990 Filed 12-26-91; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Scientific and Commercial Development of Suramin as an Anticancer Agent

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) seeks a pharmaceutical company which can effectively pursue the clinical development of suramin for the treatment of cancer. The National Cancer Institute has established that this agent may be effective in treating several types of cancers. The selected sponsor will be awarded a CRADA for the development of this agent.

ADDRESSES: Questions about this opportunity may be addressed to Dale Shoemaker, Ph.D., Executive Secretary, CRADA Selection Committee, Division of Cancer Treatment, NCI, EPN, room 718, Bethesda, Maryland 20892 (301) 496-7912, from whom further information including a summary copy of the preclinical and clinical data may be obtained.

DATE: In view of the important priority of developing new drugs for the treatment of cancer, this notice is active until February 10, 1992.

SUPPLEMENTARY INFORMATION: The Government is seeking a pharmaceutical company which, in accordance with the requirements of the regulations governing the transfer of Government-developed agents (37 CFR 404.8), can develop suramin to a marketable status to meet the needs of the public and with the best terms for the Government. Suramin is a polysulfonated naphthylurea which has demonstrated promising antitumor activity in prostate cancer patients. Some activity has also been noted in patients with adrenocortical cancer. Clinical studies are ongoing in both tumors to better define the response rate. Additional Phase I studies are planned to better determine the maximum tolerated dose and toxicity of suramin. Suramin is not covered by a patent and may classify as an orphan agent.

The Division of Cancer Treatment, NCI, is interested in establishing a CRADA for this agent with a pharmaceutical company to assist in the continuing development of the agent. The Government will provide all available expertise and information to date and will jointly pursue new clinical studies as required giving the pharmaceutical company exclusive

rights to the New Drug Application-directed clinical data from Phase II/III trials.

The successful pharmaceutical company will provide the necessary financial and organizational support to complete further development of this agent to establish clinical efficacy and possible commercial status.

The role of the Division of Cancer Treatment, NCI, includes the following:

1. The Government will provide information concerning pharmaceutical manufacturing and controls including dosage form development data.

2. The Government will allow the pharmaceutical company to review and cross-file the Division's IND for the agent; it is likely that the pharmaceutical company would wish to undertake clinical studies independently.

3. The Government will make the Division's IND for the agent proprietary under such circumstances and the IND data will be offered exclusively to the selected pharmaceutical company.

4. The Government will continue the preclinical and clinical development of the agent under its extramural clinical trials network.

The role of the successful pharmaceutical company for the agent under a CRADA will include the following:

1. Provide and implement plans to independently secure future continuing supplies of the agent to assure continued preclinical and clinical development. The pharmaceutical company will reimburse the Division of Cancer Treatment, NCI for the costs of production of suramin produced from the date of this Notice until such time as the company shall assume responsibility for satisfying the supplies required by the Division of Cancer Treatment, NCI.

2. Provide plan and support for clinical development leading to FDA approval for marketing.

Criteria for choosing the pharmaceutical company include the following:

1. Experience in the preclinical and clinical development of anticancer agents.

2. Experience and ability to produce, package, market and distribute pharmaceutical agents in the United States and to provide the agent at a reasonable price.

3. Experience in the monitoring, evaluation and interpretation of the data from investigational agent clinical studies under an IND.

4. A willingness to cooperate with the Public Health Service in the collection, evaluation, publication and maintenance of data from clinical trials of investigational agents.

5. A willingness to cost share in the development of the agent. This includes the acquisition of bulk material and formulation of clinical products in adequate amounts as needed for future clinical trials and marketing.

6. An agreement to be bound by the DHHS rules involving human and animal subjects.

7. The aggressiveness of the development plan, including the appropriateness of milestones and deadlines and clinical development.

8. Provisions for equitable distribution of patent rights to any inventions. Generally the rights of ownership are retained by the organization which is the employer of the inventor, with (1) an irrevocable, nonexclusive, royalty-free license to the Government (when a company employee is the sole inventor) or (2) an exclusive or nonexclusive license to the company on terms that are appropriate (when the Government employee is the sole inventor).

Dated: December 6, 1991.

Reid Adler,

Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 91-30991 Filed 12-26-91; 8:45 am]

BILLING CODE 4140-01-M

Regional Meetings

The National Institutes of Health (NIH) has been engaged in a strategic planning process aimed at developing the agency's first corporate long-range Strategic Plan. The purpose of the NIH Strategic Plan is to: (1) Identify areas of research that promise extraordinary dividends for the Nation's future health, (2) nurture the intellectual base of biomedical research and the conditions that lead to breakthroughs on the cutting edge of science, and (3) provide approaches for addressing broad administrative and science policy issues that affect the ability of the NIH to carry out its mandate. The Strategic Plan incorporates the ideas of all the organizational components of the NIH as well as the research components of the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA).

Notice is hereby given that the NIH will convene two regional meetings to provide a forum for the extramural community to comment on the draft Strategic Plan before it is finalized. The first meeting will take place on February 12, 1992, at Occidental College, Los Angeles, California, and will be co-hosted by Occidental College and the Charles R. Drew University of Medicine and Science. The second meeting will be held on February 25, at the University of Connecticut Health Center, Farmington, Connecticut.

Each of the regional meetings will be of one day duration, beginning at 9 a.m. and ending at 3 p.m. The meetings will begin with the NIH Director presenting an overview of the NIH Strategic Plan. Immediately afterwards, representatives of concerned organizations and institutions will be invited to present testimony before a panel of senior NIH officials, to be chaired by the Director, NIH. Due to time constraints, we would appreciate it if only one representative from each organization would present testimony; oral presentations will be limited to five minutes. Written testimony can be any length and should include a brief description of the organization presenting. Testimony will be scheduled based upon when notification of intent to present testimony is received. If the number of organizations wishing to present oral testimony exceeds the time available on the agenda, the individual written statements will serve as testimony presented. All testimony, whether oral or written, will form a part of the official record of the NIH Strategic Plan.

If you will be attending one of the regional meetings or if your organization would like to testify before the NIH panel, please notify Jay Moskowitz, Ph.D., National Institutes of Health, Shannon Building, Room 103, 9000 Rockville Pike, Bethesda, Maryland 20892, by mail or facsimile (301-402-1759) by January 13, 1992. A copy of the Draft NIH Strategic Plan, as well as additional information about the meetings, will be sent in advance of the regional meetings to participants attending and/or testifying.

If you or others from your organization who plan to attend one of these regional meetings have any special needs that require assistance, please inform the office listed above. If you have questions concerning either of the two regional meetings, please contact Ms. Mary Demory (301) 496-1454.

Dated: November 27, 1991.

Bernadine Healy,

Director, NIH.

[FR Doc. 91-30992 Filed 12-26-91; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information

collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, December 20, 1991.

(Call PHS Reports Clearance Officer on 202–245–2100 for copies of package)

1. *National STD Hotline Survey of Callers*—New—The hotline is intended to serve the general population throughout the country, including rural communities and areas of low population density which have limited access to other sources of STD information. CDC is requesting clearance to gather information in order to manage the hotline more effectively and assess its national impact coverage. Respondents: Individuals of households; Number of Respondents: 1,100; Number of Responses per Respondent: 1; Average Burden per Response: .016 hour; Estimated Annual Burden: 18 hours.

2. *Case Control Study to Characterize the Risk of Seafood-Associated Disease*—New—Information will be collected by telephone or by household interview to establish population-based surveillance for laboratory confirmed infections by pathogens such as *Vibrio* sppl and *Salmonella jejuni*. This study will provide detailed and quality-controlled data on the risk of foodborne hazards and measure the magnitude of the public health burden imposed by seafood consumption. Respondents: Individuals or households; Number of Respondents: 1600; Number of Responses per Respondent: 1; Average Burden per Reponse: .5 hours; Estimated Annual Burden: 800 hours.

3. *NHANES I Epidemiologic Followup Study: 1992 Wave*—0920–0218—The NHANES I Epidemiologic Followup Study, a national longitudinal followup, investigates relationships between baseline factors and subsequent morbidity, mortality, hospital utilization and institutionalization. It includes the 14,407 adult persons examined in NHANES I (1971–75). The surviving cohort (n=11,195) will be recontacted in 1992/1993. Respondents: Individuals or households; State or local governments; businesses or other for-profit; Federal agencies or employees; non-profit institutions; small businesses or organizations; Number of Respondents: 6,248; Number of Responses per Respondent: 1; Average Burden per Response: .64 hours; Estimated Annual Burden: 4,022 hours.

4. *Organ Procurement and Transplantation Network (OPTN) Data System*—New—Information will be collected from organ procurement organizations; histocompatibility laboratories and transplant centers for the purposes of matching donor organs with recipients, monitoring compliance of member organizations with the data system rules, conducting research and statistical analysis, and for developing policies relating to organ procurement and transplantation. Respondents: Non-profit institutions; small businesses or organizations; businesses or other for-profit.

	No. of respondents	No. of responses per respondent	Average burden per response (hours)
Transplant Candidate Registration Form	69	272	0.2
Donor Registration Form	69	250	0.5
Potential Recipient Form	69	246	0.5
Donor Histocompatibility Form	39	123	0.1
Transplant Recipient Histocompatibility Form	39	414	0.1
Transplant Recipient Registration Form	265	61	0.5
Transplant Recipient Follow-up Form	265	307	0.5

Estimated Annual Burden: 71,774 hours.

5. *Cardiovascular Health Study (CHS)*—0925–0334—A random sample of 5,201 men and women aged 65 years and older was recruited from four communities between June, 1989, and May, 1990, and this cohort will be followed prospectively for the development of new cardiovascular disease risk factors, subclinical disease and overt disease. Respondents: Individuals or households; businesses or other for profit; small businesses or organizations.

	No. of respondents	No. of responses per respondent	No. of hours per response
Cohort Members	4,980	3	0.958
Next-of-Kin of Cohort Decendents	202	1,000	0.25
Physicians	184	1	0.10

Estimated Annual Burden: 15,062.

6. Oral Health Outcomes in San Antonio, Texas—0920–0284—Oral health surveys will be conducted in San Antonio, Texas. Respondents will be consumers, dentists, students and school officials. Data will be collected on personal oral health services, lifestyle behaviors, community-based activities and environmental agents as they contribute to resultant oral health. Respondents: Individuals or households; businesses or other for profit; small businesses or organizations; Number of Respondents: 18,439; Number of Responses per Respondent: 1; Average Burden per Response: .185 hours; Estimated Annual Burden: 3,420 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: December 23, 1991.

Sandra K. Mahkorn,

Deputy Assistant Secretary for Health Policy.

[FR Doc. 91–30955 Filed 12–26–91; 8:45 am]

BILLING CODE 4160–17–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on December 13, 1991.

(Call Reports Clearance Officer on (301) 965–4149 for copies of package)

1. Real Property Current Market Value Estimate—0960–0471. The information collected on the form SSA–2794 is used to determine the value of non-home real property owned by applicants for or recipients of supplemental security income. The respondents are persons experienced in estimating the current market value of property.

Number of Respondents: 4,875.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 1,625 hours.

2. Farm Self-Employment Questionnaire—0960–0061. The information collected on the form SSA–7156 is used by the Social Security Administration to determine whether an agricultural trade or business exists and possible covered earnings for social security purposes.

Number of Respondents: 47,500.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 7,917 hours.

3. Request for Earnings and Benefit Estimate Statement—0960–0466. The information collected on the form SSA–7004 is used to provide a statement of earnings, quarters of coverage and future benefit estimates to certain workers and self-employed individual. The respondents are individuals requesting personal earnings and benefit statements.

Number of Respondents: 6,000,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 500,000 hours.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: December 13, 1991.

Ron Compston,

Social Security Administration, Reports Clearance Officer.

[FR Doc. 91–30551 Filed 12–26–91; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning Development

[Docket No. N–91–1917; FR–2934–N–58]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.)

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following address: U.S. Army: Robert Conte, Dept. of Army, Military Facilities, DAEN–ZCI–P; Rm. 1E671, Pentagon, Washington, DC 20310–2600; (202) 693–4583; U.S. Air Force: Bob Menke, USAF, Bolling AFB, SAF–MIIR, Washington, DC 20332–5000; (202) 767–6235; GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501–0067; Dept. of Veterans Affairs: Douglas Shinn, Management Analyst, Dept. of Veterans Affairs, room 414 Lafayette Bldg., 811 Vermont Ave. NW, Washington, DC 20420; (202) 233–8474; Dept. of Transportation; Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW, room 10319, Washington, DC 20590; (202) 366–4246; Dept. of Energy: Tom Know, Realty Specialist, AD223.1, 1000 Independent Ave. SW, Washington, DC 20585; (20) 586–1191. (These are not toll-free numbers)

Dated: December 20, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 12/27/91

Suitable/Available Properties

Buildings (by State)

Alabama

Bldgs. T03204, T03205 Fort Rucker
Cowboy & Crusader Streets
Fort Rucker, Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219130096–219130097
Status: Unutilized.
Comment: 3003 sq. ft., one story wood structure, most recent use—administration, presence of asbestos, off-site use only.

Bldg. T03220, Fort Rucker
Cowboy & Crusader Streets
Fort Rucker, Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219130098
Status: Unutilized.
Comment: 1250 sq. ft., one story wood structure, most recent use—administration, presence of asbestos, off-site use only.

Bldg. T03224, Fort Rucker
Cowboy & Crusader Streets
Fort Rucker, Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219130099
Status: Unutilized.
Comment: 2677 sq. ft., one story wood structure, most recent use—administration, presence of asbestos, off-site use only.

Bldg. T03210, Fort Rucker
Cowboy & Crusader Streets
Fort Rucker, Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219130100
Status: Unutilized.
Comment: 3000 sq. ft., one story wood structure, most recent use—maintenance shop, presence of asbestos, off-site use only.

Bldg. T03212, Fort Rucker
Cowboy & Crusader Streets
Fort Rucker, Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219130101
Status: Unutilized.
Comment: 5310 sq. ft., two story wood structure, presence of asbestos, off-site use only.

Bldg. T03214, Fort Rucker
Cowboy & Crusader Streets
Fort Rucker, Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219130102
Status: Unutilized.
Comment: 3306 sq. ft., one story wood structure, presence of asbestos, most recent use—storehouse, off-site use only.

Bldg. T03201, Fort Rucker
Cowboy & Crusader Streets
Fort Rucker, Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219130103
Status: Unutilized.
Comment: 5310 sq. ft., two story wood structure, presence of asbestos, most recent use—barracks, off-site use only.

Bldg. 5119
Fort Rucker
3rd Avenue
Fort Rucker, Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219140023
Status: Unutilized.
Comment: 2500 sq. ft., 1 story, most recent use—supply building, off-site use only.

Bldg. 5120
Fort Rucker
3rd Avenue
Fort Rucker, Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219140024
Status: Unutilized.
Comment: 2500 sq. ft., 1 story, most recent use—supply building, off-site use only.

Bldg. 8913
Fort Rucker
7th Avenue
Fort Rucker, Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219140025
Status: Unutilized.
Comment: 3100 sq. ft., 1 story wood, most recent use—chaplain's conference room, off-site use only.

Bldg. 8914
Fort Rucker
7th Avenue
Fort Rucker, Co: Dale, AL 36362–
Landholding Agency: Army
Property Number: 219140026
Status: Unutilized.
Comment: 2250 sq. ft., 1 story wood, most recent use—chaplain headquarters, off-site use only.

Arizona

Bldg. 67202, Fort Huachuca
Sierra Vista, Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219130061
Status: Excess.
Comment: 2165 sq. ft., two story wood frame, most recent use—office presence of asbestos.

Bldg. 67203, Fort Huachuca
Sierra Vista, Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219130062
Status: Excess.
Comment: 2166 sq. ft., two story wood frame, most recent use—office presence of asbestos.

Bldg. 67211, Fort Huachuca
Sierra Vista, Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219130063
Status: Excess.
Comment: 1070 sq. ft., one story, most recent use—storehouse, presence of asbestos.

Bldg. 68224, Fort Huachuca
Sierra Vista, Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219130064
Status: Excess.
Comment: 2614 sq. ft., one story wood frame, most recent use—storehouse, presence of asbestos.

Bldg. 68310, Fort Huachuca
Sierra Vista, Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219130065
Status: Excess.
Comment: 1653 sq. ft., one story wood frame, most recent use—office, presence of asbestos.

Bldg. 70227, Fort Huachuca
Sierra Vista, Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219130066
Status: Excess.
Comment: 1868 sq. ft., one story wood frame, most recent use—office, presence of asbestos.

Bldg. 70219, Fort Huachuca
Sierra Vista, Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219130067
Status: Excess.
Comment: 2180 sq. ft., one story wood frame, most recent use—office, presence of asbestos.

Bldg. 73440, Fort Huachuca
Sierra Vista, Co: Cochise, AZ 85635–
Landholding Agency: Army
Property Number: 219130068
Status: Excess.
Comment: 1700 sq. ft., one story metal frame, most recent use—storage, possible asbestos.

California

Bldg. 116
VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles, Co: Los Angeles, CA 90073–
Landholding Agency: VA
Property Number: 979110009
Status: Underutilized.
Comment: 60309 sq. ft., 3 story brick frame, seismic reinforcement defics., underutil. port of bldg. used intermitly., needs rehab, poss. asbestos in pipes/floor tiles, site access lim.

Bldg. 263
VA Medical Center
Wilshire and Sawtelle Blvds.
Los Angeles, Co: Los Angeles, CA 90073–
Landholding Agency: VA
Property Number: 979110010
Satus: Unutilized.
Comment: 1600 sq. ft., 1 story wood frame w/ stucco exterior, needs rehab, poss. asbestos on pipes/floor tiles, site access limitations, no operating utilities.

Colorado

Bldg. 1642, Fort Carson
Specker Ave.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140077
Status: Unutilized.
Comment: 1575 sq. ft., 1 story wood, needs rehab, most recent use—admin. bldg., presence of asbestos.

Bldg. 2218, Fort Carson
Specker Ave.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140078
Status: Unutilized.

Comment: 2488 sq. ft., 1 story wood, needs rehab, most recent use—production, presence of asbestos.

Bldg. 2222, Fort Carson
Mister St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140079
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—admin. bldg., presence of asbestos.

Bldg. 2223, Fort Carson
Mister St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140080
Status: Unutilized.
Comment: 4720 sq. ft., 2 story wood, needs rehab, most recent use—classroom, presence of asbestos.

Bldg. 2224, Fort Carson
Mister St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140081
Status: Unutilized.
Comment: 4720 sq. ft., 2 story wood, needs rehab, most recent use—admin. bldg., presence of asbestos.

Bldg. 2225, Fort Carson
Mister St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140082
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—admin. bldg., presence of asbestos.

Bldg. 2226, Fort Carson
Mister St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140083
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—education center, presence of asbestos.

Bldg. 2317, Fort Carson
Mister St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140084
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—admin. bldg., presence of asbestos.

Bldg. 2320, Fort Carson
Mister St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140085
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—education center, presence of asbestos.

Bldg. 2321, Fort Carson
Mister St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140086
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—education center, presence of asbestos.

Bldg. 2323, Fort Carson
Mister St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140087
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—storage, presence of asbestos.

Bldg. 2324, Fort Carson
Mister St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140088
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—classroom, presence of asbestos.

Bldg. 2325, Fort Carson
Mister St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140089
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—admin. bldg., presence of asbestos.

Bldg. 2326, Fort Carson
Wetzel Ave.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140090
Status: Unutilized.
Comment: 2988 sq. ft., 1 story wood, needs rehab, most recent use—classroom, presence of asbestos.

Bldg. 2327, Fort Carson
Wetzel Ave.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140091
Status: Unutilized.
Comment: 2488 sq. ft., 1 story wood, needs rehab, presence of asbestos.

Bldg. 2330, Fort Carson
Polio St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140166
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—admin. bldg., presence of asbestos.

Bldg. 2331, Fort Carson
Mister St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140167
Status: Unutilized.
Comment: 1850 sq. ft., 1 story wood, needs rehab, most recent use—storage, presence of asbestos.

Bldg. 2333, Fort Carson
Polio St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140168
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—education center, presence of asbestos.

Bldg. 2334, Fort Carson
Polio St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140169
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—education center, presence of asbestos.

Bldg. 2335, Fort Carson
Specker Ave.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140170
Status: Unutilized.
Comment: 2488 sq. ft., 1 story wood, needs rehab, presence of asbestos.

Bldg. 2336, Fort Carson
Specker Ave.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140171
Status: Unutilized.
Comment: 2488 sq. ft., 1 story wood, needs rehab, most recent use—storage, presence of asbestos.

Bldg. 2418, Fort Carson
Polio St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140172
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—classroom, presence of asbestos.

Bldg. 2419, Fort Carson
Polio St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140173
Status: Unutilized.
Comment: 1852 sq. ft., 1 story wood, needs rehab, most recent use—education center, presence of asbestos.

Bldg. 2422, Fort Carson
Polio St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140174
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—classroom, presence of asbestos.

Bldg. 2424, Fort Carson
Polio St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140175
Status: Unutilized.
Comment: 5310 sq. ft., 2 story wood, needs rehab, most recent use—classroom, presence of asbestos.

Bldg. 2425, Fort Carson
Polio St.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140176
Status: Unutilized.
Comment: 2700 sq. ft., 1 story wood, needs rehab, most recent use—admin. bldg., presence of asbestos.

Bldg. 2433, Fort Carson
Specker Ave.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140177
Status: Unutilized.

Comment: 3108 sq. ft., 1 story wood, needs rehab, most recent use—education center, presence of asbestos.

Bldg. 2435, Fort Carson
Specker Ave.
Colorado Springs, Co: El Paso, CO 80913–
Landholding Agency: Army
Property Number: 219140178
Status: Unutilized.
Comment: 2488 sq. ft., 1 story wood, needs rehab, most recent use—admin., presence of asbestos.

Kansas

21 Bldgs., Fort Leavenworth
Pershing Park
Leavenworth, Co: Leavenworth, KS 66027–
Landholding Agency: Army
Property Number: 219140105–219140107, 219140110–219140111, 219140115, 219140117–219140118, 219140121, 219140127–219140128, 219140133, 219140141, 219140146–219140148, 219140152, 219140154, 2191400156, 219140159–219140160
Status: Unutilized.
Comment: 1075 sq. ft., 1 story wood frame, needs rehab, off-site use only, presence of asbestos, most recent use—family housing.

18 Bldgs., Fort Leavenworth
Pershing Park
Leavenworth, Co: Leavenworth, KS 66027–
Landholding Agency: Army
Property Number: 219140108–219140109, 219140113–219140114, 219140116, 219140126, 219140129–219140132, 219140134, 219140136, 219140144–219140145, 219140151, 219140153, 219140155, 219140158
Status: Unutilized.
Comment: 863 sq. ft., 1 story wood frame, needs rehab, off-site use only, presence of asbestos, most recent use—family housing.

10 Bldgs., Fort Leavenworth
Pershing Park
Leavenworth, Co: Leavenworth, KS 66027–
Landholding Agency: Army
Property Number: 219140112, 219140119–219140120, 219140122–219140125, 219140135, 219140137, 219140150
Status: Unutilized.
Comment: 1025 sq. ft., 1 story wood frame, needs rehab, off-site use only, presence of asbestos, most recent use—family housing.

Bldg. 1466A, Fort Leavenworth
Pershing Park
Leavenworth, Co: Leavenworth, KS 66027–
Landholding Agency: Army
Property Number: 219140138
Status: Unutilized.
Comment: 1536 sq. ft., 1 story wood frame, needs rehab, off-site use only, presence of asbestos, most recent use—detached garage.

Bldg. 1467, Fort Leavenworth
Pershing Park
Leavenworth, Co: Leavenworth, KS 66027–
Landholding Agency: Army
Property Number: 219140139
Status: Unutilized.
Comment: 584 sq. ft., 1 story wood frame, needs rehab, off-site use only, presence of asbestos, most recent use—office scout bldg.

Bldg. 1357, Fort Leavenworth
Pershing Park
Leavenworth, Co: Leavenworth, KS 66027–
Landholding Agency: Army
Property Number: 219140140
Status: Unutilized.
Comment: 1512 sq. ft., 1 story wood frame, needs rehab, off-site use only, presence of asbestos, most recent use—detached garage.

5 Bldgs., Fort Leavenworth
Pershing Park
Leavenworth, Co: Leavenworth, KS 66027–
Landholding Agency: Army
Property Number: 219140142–219140143, 219140157, 219140161, 219140164
Status: Unutilized.
Comment: 1008 sq. ft., 1 story wood frame, needs rehab, off-site use only, presence of asbestos, most recent use—detached garage.

Bldg. 1400, Fort Leavenworth
Pershing Park
Leavenworth, Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219140149
Status: Unutilized.
Comment: 1776 sq. ft., 1 story wood frame, needs rehab, off-site use only, presence of asbestos, most recent use—detached garage.

Bldgs. 1450–1451, Fort Leavenworth
Pershing Park
Leavenworth, Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219140162–219140163
Status: Unutilized.
Comment: 1776 sq. ft., 1 story wood frame, needs rehab, off-site use only, presence of asbestos, most recent use—detached garage.

Kentucky

Bldg. 1459, Fort Leavenworth
Pershing Park
Leavenworth, Co: Leavenworth KS 66027–
Landholding Agency: Army
Property Number: 219140165
Status: Unutilized.
Comment: 1272 sq. ft., 1 story wood frame, needs rehab, off-site use only, presence of asbestos, most recent use—detached garage.

Bldg. 6301
Fort Knox
Ft. Knox, Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219140015
Status: Unutilized.
Comment: 3774 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—office.

Bldg. 6302
Fort Knox
Ft. Knox, Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219140016
Status: Unutilized.
Comment: 1487 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—office.

Bldg. 6303
Fort Knox
Ft. Knox, Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219140017
Status: Unutilized.
Comment: 1254 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—storage.

Bldg. 6304
Fort Knox
Ft. Knox, Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219140018
Status: Unutilized.
Comment: 1062 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—storage.

Bldg. 6305
Fort Knox
Ft. Knox, Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219140019
Status: Unutilized.
Comment: 2257 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—storage.

Bldg. 6306
Fort Knox
Ft. Knox, Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219140020
Status: Unutilized.
Comment: 1941 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—office.

Bldg. 6307
Fort Knox
Ft. Knox, Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219140021
Status: Unutilized.
Comment: 1811 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—office.

Bldg. 6308
Fort Knox
Ft. Knox, Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219140022
Status: Unutilized.
Comment: 3113 sq. ft., 1 story wood frame, needs rehab, presence of asbestos, most recent use—classroom.

Louisiana

Bldg. T–4701
Fort Polk
Ft. Polk, Co: Vernon LA 71459–5000
Landholding Agency: Army
Property Number: 219140045
Status: Unutilized.
Comment: 1000 sq. ft., 1 story, most recent use—office.

Bldg. T–4701B
Fort Polk
Ft. Polk, Co: Vernon LA 71459–5000
Landholding Agency: Army
Property Number: 219140046
Status: Unutilized.
Comment: 660 sq. ft., 1 story, most recent use—storage.

Bldg. T–4702, T–4703, T–4705, T–4706
Fort Polk
Ft. Polk, Co: Vernon LA 71459–5000
Landholding Agency: Army
Property Number: 219140047–219140048, 219140050–219140051
Status: Unutilized.

Comment: 5913 sq. ft., 2 story, most recent use—storage.
Bldg. T–4704
Fort Polk
Ft. Polk, Co: Vernon LA 71459–5000
Landholding Agency: Army
Property Number: 219140049
Status: Unutilized.
Comment: 3040 sq. ft., 1 story, most recent use—office.
Bldg. T–4707
Fort Polk
Ft. Polk, Co: Vernon LA 71459–5000
Landholding Agency: Army
Property Number: 219140052
Status: Unutilized.
Comment: 1045 sq. ft., 1 story, most recent use—office.
Bldg. T–4708
Fort Polk
Ft. Polk, Co: Vernon LA 71459–5000
Landholding Agency: Army
Property Number: 219140053
Status: Unutilized.
Comment: 2184 sq. ft., 1 story, most recent use—office.
Bldg. T–4709
Fort Polk
Ft. Polk, Co: Vernon LA 71459–5000
Landholding Agency: Army
Property Number: 219140054
Status: Unutilized.
Comment: 3587 sq. ft., 1 story, most recent use—storage.
Bldg. T–4716–T–4724, T–4726–T–4734
Fort Polk
Ft. Polk, Co: Vernon LA 71459–5000
Landholding Agency: Army
Property Number: 219140055–219140063, 219140065–219140073
Status: Unutilized.
Comment: 4357 sq. ft., 2 story, most recent use—barracks (storage).
Bldg. T–4725
Fort Polk
Ft. Polk, Co: Vernon LA 71459–5000
Landholding Agency: Army
Property Number: 219140064
Status: Unutilized.
Comment: 3044 sq. ft., 1 story, most recent use—library.

Massachusetts

Bldg. KB–0021
Fort Devens
Ft. Rodman, MA 02744–
Landholding Agency: Army
Property Number: 219140027
Status: Unutilized.
Comment: 4926 sq. ft., 1 story wood, presence of asbestos, most recent use—storage.
Bldg. KB–0100
Fort Devens
Ft. Rodman, MA 02744–
Landholding Agency: Army
Property Number: 219140028
Status: Unutilized.
Comment: 9100 sq. ft., 1 story insulated monopanel, most recent use—reserve center.
Bldg. KB–0102
Fort Devens
Ft. Rodman, MA 02744–
Landholding Agency: Army
Property Number: 219140029
Status: Unutilized.
Comment: 15480 sq. ft., 1 story concrete block, most recent use—reserve center.
Bldg. T–0208, T–0209
Fort Devens
Ft. Devens, Co: Middlesex/Worce MA 01433–
Landholding Agency: Army
Property Number: 219140030–219140031
Status: Unutilized.
Comment: 4720 sq. ft., 2 story wood, presence of asbestos, needs rehab.
Bldg. T–0236
Fort Devens
Ft. Devens, Co: Middlesex/Worce MA 01433–
Landholding Agency: Army
Property Number: 219140032
Status: Unutilized.
Comment: 4613 sq. ft., 1 story wood, presence of asbestos, needs rehab.
Bldg. T–2676
Fort Devens
Ft. Devens, Co: Middlesex/Worce MA 01433–
Landholding Agency: Army
Property Number: 219140033
Status: Unutilized.
Comment: 1176 sq. ft., 1 story wood, presence of asbestos, needs rehab.

Missouri

Bldgs. T375, T376, T385
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219140040–219140042
Status: Underutilized.
Comment: 4720 sq. ft., 2 story wood frame, presence of asbestos, not handicapped accessible, to be vacant Feb. 1992.
Bldg. 384
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219140043
Status: Underutilized.
Comment: 1292 sq. ft., 1 story wood frame, presence of asbestos, not handicapped accessible, to be vacant Feb. 1992.
Bldg. T6818
Fort Leonard Wood
Ft. Leonard Wood, Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219140044
Status: Underutilized.
Comment: 10092 sq. ft., 1 story concrete/block frame, presence of not handicapped accessible, limited utilities.

Oklahoma

Bldg. S–2643,. Fort Sill
2643 Tacy Street
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130069
Status: Unutilized.
Comment: 82 sq. ft., metal frame shed, off-site use only.
Bldg. S–2644, Fort Sill
2644 Tacy Street
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130070
Status: Unutilized.
Comment: 77 sq. ft., metal frame shed, off-site use only.
Bldg. 226, Fort Sill
226 Corral Road
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130071
Status: Unutilized.
Comment: 11116 sq. ft., one story wood frame, most recent use—administration, off-site use only, possible asbestos.
Bldg. T–255, Fort Sill
255 Corral Road
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130072
Status: Unutilized.
Comment: 2619 sq. ft., one story wood frame, off-site use only, possible asbestos.
Bldg. 932, Fort Sill
932 Ft. Sill Blvd.
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130073
Status: Unutilized.
Comment: 2134 sq. ft., one story wood stucco, off-site use only, possible asbestos, most recent use—exchange branch.
Bldg. 1667, Fort Sill
1667 Gruber Road
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130074
Status: Unutilized.
Comment: 3615 sq. ft., one story wood & stucco, off-site use only, possible asbestos, most recent use—administration.
Bldg. T–2609, Fort Sill
2609 Currie Road
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130075
Status: Unutilized
Comment: 4545 sq. ft., one story wood frame, off-site use only, possible asbestos, most recent use—administration.
Bldg. T–2612, Fort Sill
2612 Miner Road
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130076
Status: Unutilized.
Comment: 2144 sq. ft., two story wood frame, off-site use only, possible asbestos, most recent use—administration.
Bldg. T–2616, Fort Sill
2616 Ringold Road
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130077
Status: Unutilized.
Comment: 3702 sq. ft., two story wood frame, most recent use—barracks, off-site use only, possible asbestos.
Bldg. T–2617, Fort Sill
2616 Ringold Road
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130078
Status: Unutilized.
Comment: 3778 sq. ft., two story wood frame, most recent use—administration, off-site use only, possible asbestos.

Bldg. T–2755, Fort Sill
2755 Miner Road
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130079
Status: Unutilized.
Comment: 5090 sq. ft., two story wood frame, most recent use—barracks w/o dining, off-site use only, possible asbestos.

Bldg. T–3033, Fort Sill
3033 Hoskins Road
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130080
Status: Unutilized.
Comment: 2022 sq. ft., one story wood frame, most recent use—storage, off-site use only, possible asbestos.

Bldg. T–3034, Fort Sill
3034 Hoskins Road
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130081
Status: Unutilized.
Comment: 4751 sq. ft., one story wood frame, most recent use—storage, off-site use only, possible asbestos.

Bldg. T–3158, Fort Sill
3158 Harvey Road
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130082
Status: Unutilized.
Comment: 1612 sq. ft., one story wood frame, most recent use—storehouse, off-site use only, possible asbestos.

Bldg. T–3159, Fort Sill
3159 Harvey Road
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130083
Status: Unutilized.
Comment: 2071 sq. ft., one story wood frame, most recent use—storehouse, off-site use only, possible asbestos.

Bldg. T–3538, Fort Sill
3538 Tacy Street
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130084
Status: Unutilized.
Comment: 2762 sq. ft., one story wood frame, most recent use—administration, off-site use only, possible asbestos.

Bldg. T–3547, Fort Sill
3547 Walker Street
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130085
Status: Unutilized.
Comment: 1154 sq. ft., one story wood frame, most recent use—administration, off-site use only, possible asbestos.

Bldg. T–3556, Fort Sill
3556 Tacy Street
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130086
Status: Unutilized.
Comment: 3142 sq. ft., one story wood frame, most recent use—storage, off-site use only, possible asbestos.

Bldg. T–3557, Fort Sill
3557 Tacy Street
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130087
Status: Unutilized.
Comment: 3876 sq. ft., one story wood frame, most recent use—gen construction bldg., off-site use only, possible asbestos.

Bldg. T–3628, Fort Sill
3628 Tacy Street
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130088
Status: Unutilized.
Comment: 2084 sq. ft., one story wood frame, most recent use—administration, off-site use only, possible asbestos.

Bldg. T–3637, Fort Sill
3637 Scott Street
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130089
Status: Unutilized.
Comment: 2766 sq. ft., one story wood frame, most recent use—classroom, off-site use only, possible asbestos.

Bldg. T–3688, Fort Sill
3688 Tacy Street
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130090
Status: Unutilized.
Comment: 2760 sq. ft., one story wood frame, most recent use—storehouse, off-site use only, possible asbestos.

Bldg. T–3702, Fort Sill
3702 Walker Street
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130091
Status: Unutilized.
Comment: 2749 sq. ft., one story wood frame, most recent use—barracks, off-site use only, possible asbestos.

Bldg. T–4215, Fort Sill
4215 Thomas Street
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130092
Status: Unutilized.
Comment: 1311 sq. ft., one story wood frame, most recent use—storage, off-site use only possible asbestos.

Bldg. T–4216, Fort Sill
4216 Thomas Street
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130093
Status: Unutilized.
Comment: 1297 sq. ft., one story wood frame, most recent use—storage, off-site use only, possible asbestos.

Bldg. T–5612, Fort Sill
5612 Pratt Road
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130094
Status: Unutilized.
Comment: 149 sq. ft., one story metal, most recent use—gas station, off-site use only, possible asbestos.

Bldg. T–5620, Fort Sill
5620 Pratt Road
Lawton, Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 219130095
Status: Unutilized.
Comment: 1552 sq. ft., one story wood frame, most recent use—administration, off-site use only, possible asbestos.

South Carolina

Bldg. 2438
Fort Jackson
Ft. Jackson, Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219140003
Status: Unutilized.
Comment: 3779 sq. ft., 1 story wood frame, off-site removal only, needs rehab, most recent use—storage.

Bldg. 8562
Fort Jackson
Ft. Jackson, Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219140004
Status: Unutilized.
Comment: 992 sq. ft., 1 story wood frame, off-site removal only, needs rehab, most recent use—administrative.

Bldg. 8564
Fort Jackson
Ft. Jackson, Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219140005
Status: Unutilized.
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, needs rehab, most recent use—troop billets.

Bldg. 8568
Fort Jackson
Ft. Jackson, Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219140006
Status: Underutilized
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, needs rehab, most recent use—travel office.

Bldg. 8571
Fort Jackson
Ft. Jackson, Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219140007
Status: Underutilized
Comment: 3196 sq. ft., 1 story wood frame, off-site removal only, needs rehab, most recent use—storage.

Bldg. 8572
Fort Jackson
Ft. Jackson, Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219140008
Status: Unutilized
Comment: 2284 sq. ft., 1 story wood frame, off-site removal only, needs rehab, most recent use—administrative.

Bldg. 8573
Fort Jackson
Ft. Jackson, Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219140009
Status: Unutilized
Comment: 720 sq. ft., 1 story wood frame, off-site removal only, needs rehab, most recent use—open sided waiting shelter.

Bldg. 8575
Fort Jackson
Ft. Jackson, Co: Richland SC 29207–
Landholding Agency: Army

Property Number: 219140010
Status: Unutilized
Comment: 1029 sq. ft., 1 story wood frame, off-site removal only, needs rehab, most recent use—open sided waiting shelter.

Bldg. 8576
Fort Jackson
Ft. Jackson, Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21940011
Status: Unutilized
Comment: 3888 sq. ft., 1 story wood frame, off-site revoval only, needs rehab, most recent use—open sided waiting shelter.

Bldg. 9530
Fort Jackson
Ft. Jackson, Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 2191400–12
Status: Underutilized
Comment: 5782 sq. ft., 1 story wood frame, off-site removal only, needs, rehab, most recent use—administrative.

Bldg. 9618
Fort Jackson
Ft. Jackson, Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219140013
Status: Underutilized
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, needs rehab, most recent use—billets/storage.

Bldg. 9636
Fort Jackson
Ft. Jackson, Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 219140014
Status: Underutilized
Comment: 1170 sq. ft., 1 story wood frame, off-site removal only, needs rehab, most recent use—storage.

Texas

Bldg. 666
Fort Bliss
666 Pleasonton Road
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219130020
Status: Unutilized
Comment: 972 sq. ft., one story wood frame, needs rehab, off-site use only, most recent use—general storehouse.

Bldg. 668
Fort Bliss
668 Pleasonton Road
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219130021
Status: Unutilized
Comment: 1770 sq. ft., one story wood frame, needs painting, most recent use—general storehouse, off-site use only.

Bldg. 839
Fort Bliss
839 Lufberry Road
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219130022
Status: Unutilized
Comment: 3540 sq. ft., two story wood frame, needs painting, most recent use—instructional bldg., off-site use only.

Bldg. 4746
Fort Bliss
4746 Grinder Avenue
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219130023
Status: Unutilized
Comment: 873 sq. ft., one story wood frame, needs painting, most recent use—day room, off-site use only.

Bldg. 4750
Fort Bliss
4750 Gatchell Avenue
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219130024
Status: Unutilized
Comment: 858 sq. ft., one story wood frame, needs painting, most recent use—general storehouse, off-site use only.

Bldg. 4759
Fort Bliss
4759 Grinder Avenue
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219130025
Status: Unutilized
Comment: 915 sq. ft., one story wood frame, needs painting, most recent use—general storehouse, off-site use only.

Bldg. 4760
Fort Bliss
4760 Gatchell Avenue
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219130026
Status: Unutilized
Comment: 915 sq. ft., one story wood frame, possible asbestos, most recent use—day room, off-site use only.

Bldg. 4767
Fort Bliss
4767 Burgin Street
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219130027
Status: Unutilized
Comment: 2169 sq. ft., one story wood frame, most recent use—general storehouse, presence of asbestos in boiler room, off-site use only.

Bldg. 4768
Fort Bliss
4768 Burgin Street
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219130028
Status: Unutilized.
Comment: 873 sq. ft., one story wood frame, most recent use—administrative, presence of asbestos in boiler room, off-site use only.

Bldg. 4822
Fort Bliss
4822 Gatchell Avenue
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219130029
Status: Unutilized.
Comment: 1770 sq. ft., one story wood frame, most recent use—general storehouse, off-site use only.

Bldg. 4831
Fort Bliss
4831 Hohenthal Avenue
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219130030
Status: Unutilized.
Comment: 915 sq. ft., one story wood frame, most recent use—day room, off-site use only.

Bldg. 4840
Fort Bliss
4840 Burgin Street
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219130031
Status: Unutilized.
Comment: 1770 sq. ft., one story wood frame, most recent use—general instructional bldg., presence of asbestos in boiler room, off-site use only.

Bldg. 4852
Fort Bliss
4852 Hohenthal Avenue
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219130032
Status: Unutilized.
Comment: 2169 sq. ft., one story wood frame, most recent use—instructional bldg., presence of asbestos in boiler room, off-site use only.

Bldg. 11254
Fort Bliss
11254 Sgt. F. Markle Street
El Paso, Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 219130033
Status: Unutilized.
Comment: 1312 sq. ft., one story wood frame, most recent use—administrative, needs painting, off-site use only.

Bldg. 509
Fort Hood
Old Battalion Avenue
Ft. Hood, Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219140001
Status: Unutilized.
Comment: 2880 sq. ft., 2 story wooden structure, needs rehab, most recent use—storage.

Bldg. 510
Fort Hood
Old Battalion Avenue
Ft. Hood, Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219140002
Status: Unutilized.
Comment: 2880 sq. ft., 2 story wood structure, needs rehab, most recent use—youth center.

Bldg. 912
Fort Hood
Central Drive
Ft. Hood, Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219140035
Status: Unutilized.
Comment: 2763 sq. ft., 1 story, needs rehab, most recent use—storage.

Bldg. 913
Fort Hood
Central Drive
Ft. Hood, Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219140036
Status: Unutilized.
Comment: 1215 sq. ft., 1 story, needs rehab, most recent use—storage.

Bldg. 944
Fort Hood
Old Park Avenue
Ft. Bood, Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219140037
Status: Unutilized
Comment: 1098 sq. ft., 1 story, needs storage.
Bldg. 1035
Fort Hood
Battalion Avenue
Ft. Hood, Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219140038
Status: Unutilized.
Comment: 23211 sq. ft., 1 story, needs rehab, most recent use—storage.
Bldg. 1057
Fort Hood
Battalion Avenue
Ft. Hood, Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 219140039
Status: Unutilized.
Comment: 17100 sq. ft., 1 story, needs rehab, most recent use—storage.

Utah

100 KW Solar Photovoltaic Sys.
Natl. Bridges National Monument
P.O. Box 1
Lake Powell, Co: San Juan UT 84533–
Landholding Agency: Energy
Property Number: 419140001
Status: Excess.
Comment: solar panels, off-site use only, current use–generate electrical power.

Virginia

Bldg. 97
Fort Monroe
Fort Monroe VA 23651–
Landholding Agency: Army
Property Number: 219130005
Status: Unutilized.
Comment: 2220 sq. ft., one story, most recent use—photo lab, needs major rehab, on National Register of Historic Landmarks.
Bldg. 45
Fort Myer
Washington Avenue
Ft. Myer, Co: Arlington VA 22211–
Landholding Agency: Army
Property Number: 219140034
Status: Unutilized.
Comment: 2034 sq. ft., 2 story brick/wood residence, needs rehab, presence of asbestos, off-site use only.
Bldg. 442, Warehouse Bldg.
Fort Myer
Pershing Drive
Ft. Myer, Co: Arlington VA 22211–
Landholding Agency: Army
Property Number: 219140074
Status: Unutilized.
Comment: 6088 sq. ft., 1 story, concrete floor contaminated with trichloroethane and perchloroethlene, presence of lead-based paint, off-site use only.
Bldg. 442A Warehouse Bldg.
Fort Myer
Pershing Drive
Ft. Myer, Co: Arlington VA 22211–
Landholding Agency: Army
Property Number: 219140075
Status: Unutilized.
Comment: 6088 sq. ft., 1 story, concrete floor contaminated with trichloroethane and perchloroethlene, presence of lead-based paint, off-site use only.
Bldg. 443, Dry Cleaning Plant
Fort Myer
Pershing Drive
Ft. Myer, Co: Arlington VA 22211–
Landholding Agency: Army
Property Number: 219140076
Status: Unutilized.
Comment: 3650 sq. ft., 1 story brick masonry, contaminated with trichloroethane, perchloroethlene and lead-based paint, off-site use only.

Wisconsin

Bldg. 2
VA Medical Center
County Highway E
Tomah, Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 979010055
Status: Underutilized.
Comment: 18000 sq. ft., 3 story masonry, needs rehab, possible asbestos, potential utilities.
Bldg. 8
VA Medical Center
County Highway E
Tomah, Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 979010056
Status: Underutilized.
Comment: 2200 sq. ft., 2 story wood frame, possible asbestos, potential utilities, structural deficiencies, needs rehab.

Land (By State)

Alabama

VA Medical Center
VAMC
Tuskegee, Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 979010053
Status: Underutilized.
Comment: 40 acres, buffer to VA Medical Center, potential utilities, undeveloped.

Georgia

Lake Sidney Lanier
Riverside Dr.
Gainesville, Co: Hall GA
Landholding Agency: GSA
Property Number: 549140003
Status: Excess.
Comment: 6.22 acres, leased to City for construction of an alum sludge dewatering and wash water handling facility.
GSA Number: 4–D–GA–731

Louisiana

Land—8.27 acres
VA Medical Center
2501 Shreveport Highway
Alexandria, Co: Rapides LA 71301–
Landholding Agency: VA
Property Number: 979010009
Status: Unutilized.
Comment: 8.27 acres, heavily wood with natural drainage ravine across property, most recent use—recreation/buffer area.

Maryland

VA Medical Center
9500 North Point Road
Fort Howard, Co: Baltimore MD 21052–
Landholding Agency: VA
Property Number: 979010020
Status: Underutilized.
Comment: Approx. 10 acres, wetland and periodically floods, most recent use—dump site for leaves.

Minnesota

Land around Bldg. 240–249, 253
VA Medical Center
Fort Snelling
St. Paul, Co: Hennepin MN 55111–
Landholding Agency: VA
Property Number: 979010007
Status: Unutilized.
Comment: 3.76 acres, potential utilities.

Texas

Land
Olin E. Teague Veterans Center
1901 South 1st Street
Temple, Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 979010079
Status: Underutilized.
Comment: 13 acres, portion formerly landfill, portion near flammable materials, railroad crosses property, potential utilities.
VA Medical Center
4800 Memorial Drive
Waco, Co: McLennan, TX 76711–
Landholding Agency: VA
Property Number: 979010081
Status: Underutilized.
Comment: 2.3 acres, leased to Owens-Illinois Glass Plant, expiration date 10/31/91, most recent use—parking lot.

Wisconsin

VA Medical Center
County Highway E
Tomah, Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 979010054
Status: Underutilized.
Comment: 12.4 acres, serves as buffer between center and private property, no utilities.

Suitable/Unavailable Properties

Buildings (by State)

Maryland

Bldg. 8A
DVA Medical Center
Perry Point
Perry Point, Co: Cecil MD 21902–
Landholding Agency: VA
Property Number: 979010047
Status: Underutilized.
Comment: 17000 sq. ft., 1 story masonry, needs a roof, utilities, most recent use—storage.
Bldg. 15
VA Medical Center
Near 5629 Minnehaha Avenue
Minnepolis Co: Hennepin, MN 55417–
Landholding Agency: VA
Property Number: 979010025
Status: Underutilized.
Comment: 15100 sq. ft., 2 story concrete/brick frame, asbestos present in pipe insulation, most recent use—laundry.

Bldg. 16
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, Co: Hennepin MN 55417–
Landholding Agency: VA
Property Number: 979010026
Status: Underutilized.
Comment: 8000 sq. ft., 3 story concrete/brick, asbestos present on pipe insulation, most recent use—boiler plant.

Bldg. 21
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, Co: Hennepin MN 55417–
Landholding Agency: VA
Property Number: 979010027
Status: Underutilized.
Comment: 3200 sq. ft., 1 story prefab/quonset, most recent use—garage for motor vehicles.

Bldg. 48
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, Co: Hennepin MN 55417–
Landholding Agency: VA
Property Number: 979010028
Status: Underutilized.
Comment: 2000 sq. ft., 1 story concrete/block, most recent use—incinerator/storage.

Bldg. 64
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, Co: Hennepin MN 55417–
Landholding Agency: VA
Property Number: 979010029
Status: Underutilized.
Comment: 380 sq. ft., 1 story prefab, potential utilities.

Bldg. T–10
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, Co: Hennepin MN 55417–
Landholding Agency: VA
Property Number: 979010030
Status: Underutilized.
Comment: 1800 sq. ft., 1 story prefab/quonset, potential utilities, most recent use—storage.

Bldg. 43
VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, Co: Hennepin MN 55417–
Location: 54th Street and 48th Avenue S.
Landholding Agency: VA
Property Number: 979010032
Status: Underutilized.
Comment: 26000 sq. ft., 8 story brick/steel frame, asbestos present on pipe insulation, most recent use—office/storage.

Bldg. 227
VA Medical Center
Fort Snelling
St. Paul, Co: Hennepin MN 55111–
Landholding Agency: VA
Property Number: 979010033
Status: Underutilized.
Comment: 850 sq. ft., 2 story wood frame and brick residence, utilities disconnected.

New York
Bldg. 5
V.A. Medical Center
Redfield Parkway
Batavia, Co: Genese NY 14020–
Landholding Agency: VA
Property Number: 979030001
Status: Underutilized
Comment: Portion of 16800 sq. ft., 3 story, brick and masonry bldgs., needs minor repairs.

Wyoming

Bldg. 13
Medical Center
N.W. of town at the end of Fort Road
Sheridan, Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110001
Status: Underutilized.
Comment: 3613 sq. ft., 3 story wood frame masonry veneered, potential utilities, possible asbestos, needs rehab.

Bldg. 79
Medical Center
N.W. of town at the end of Fort Road
Sheridan, Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110003
Status: Underutilized.
Comment: 45 sq. ft., 1 story brick and tile frame, limited utilities, most recent use—reservoir house, use for storage purposes.

Land (by State)

California

Land
VA Medical Center
Wilshire and Sawtelle Boulevards
Los Angeles, Co: Los Angeles CA 90073–
Landholding Agency: VA
Property Number: 979010077
Status: Underutilized.
Comment: Approx. 30 acres of 80 acre tract, 7 acre portion contaminated, portions may be environmentally protected.

Illinois

VA Medical Center
3001 Green Bay Road
North Chicago, Co: Lake IL 60064–
Landholding Agency: VA
Property Number: 979010082
Status: Underutilized.
Comment: 2.5 acres, currently being used as a construction staging area for the next 6–8 years, potential utilities.

Michigan

VA Medical Center
5500 Armstrong Road
Battle Creek, Co: Calhoun MI 49016–
Landholding Agency: VA
Property Number: 979010015
Status: Underutilized.
Comment: 20 acres, used as exercise trails and storage areas, potential utilities.

Minnesota

Bldg. 43 Land Site
VA Medical Center
54th Street & 48th Avenue South
Minneapolis, Co: Hennepin MN 55417–
Landholding Agency: VA
Property Number: 979010005
Status: Underutilized.
Comment: 8.9 acres, most recent use—parking, potential utilities.

Bldg. 227–229 Land
VA Medical Center
Fort Snelling
St. Paul, Co: Hennepin MN 55111–
Landholding Agency: VA
Property Number: 979010006
Status: Underutilized.
Comment: 2.0 acres, potential utilities, buildings occupied, residence/garage.

VA Medical Center
Near 5629 Minnehaha Avenue
Minneapolis, Co: Hennepin MN 55417–
Location: Land (Site of Building 15, 16, 21, 48, 64, T10)
Landholding Agency: VA
Property Number: 979010024
Status: Underutilized.
Comment: 12.1 acres, most recent use—parking, potential utilities.

Land—12 acres
VAMC
Near 5629 Minnehaha Avenue
Minneapolis, Co: Hennepin MN 55417–
Landholding Agency: VA
Property Number: 979010031
Status: Underutilized.
Comment: 12 acres, possible asbestos, leased to Department of Natural Resources as a park walking trail.

New York

VA Medical Center
Fort Hill Avenue
Canandaigua, Co: Ontario NY 14424–
Landholding Agency: VA
Property Number: 979010017
Status: Underutilized.
Comment: 27.5 acres, used for school ballfield and parking, existing utilities easements, portion leased.

Pennsylvania

VA Medical Center
New Castle Road
Butler, Co: Butler PA 16001–
Landholding Agency: VA
Property Number: 979010016
Status: Underutilized.
Comment: Approx. 9.29 acres, used for patient recreation, potential utilities.

Land No. 645
VA Medical Center
Highland Drive
Pittsburgh, Co: Allegheny PA 15206–
Location: Between Campania and Wiltsie Streets.
Landholding Agency: VA
Property Number: 979010080
Status: Unutilized.
Comment: 52.42 acres, heavily wooded, property includes dump area and numerous site storm drain outfalls.

West Virginia

VA Medical Center
1540 Spring Valley Drive
Huntington, Co: Wayne WV 25704–
Landholding Agency: VA
Property Number: 979010022
Status: Unutilized.
Comment: 72 acres, very rough terrain and wooded, potential utilities.

Unsuitable Properties

Buildings (by State)

Alaska

Galley/Rec. Bldg.
USCG Base Ketchikan
1300 Stedman Street
Ketchikan, Co: Ketchikan AK 99901–

Landholding Agency: DOT
Property Number: 879140002
Status: Excess.
Reason: Secured area.

Supply Warehouse
USCG Base Ketchikan
1300 Stedman Street
Ketchikan, Co: Ketchikan AK 99901–
Landholding Agency: DOT
Property Number: 879140003
Status: Excess.
Reason: Secured area.

Old Barracks
USCG Base Ketchikan
1300 Stedman Street
Ketchikan, Co: Ketchikan AK 99901–
Landholding Agency: DOT
Property Number: 879140004
Status: Excess.
Reason: Secured area.

Bldg. 517
USCG Support Center Kodiak
Kodiak Island
Kodiak, Co: Kodiak Island AK 99916–5000
Landholding Agency: DOT
Property Number: 879140007
Status: Excess.
Reason: Secured area. Within airport runway clear zone.

California

Bldgs. 5001, 8011, 11443
Vandenberg Air Force Base
Vandenberg AFB, Co: Santa Barbara CA 93437–
Location: Hwy 1, Hwy 246, Coast Rd, Pt Sal Rd, Miguelito Cyn
Landholding Agency: Air Force
Property Number: 189140025, 189140028–189140029
Status: Unutilized
Reason: Secured area.

Barracks
Former Long Beach Radio Station
Palos Verde Drive
Palos Verde, Co: Los Angeles CA 90274–
Landholding Agency: DOT
Property Number: 879140008
Status: Excess.
Reason: Secured area.

Paint Locker
Former Long Beach Radio Station
Palos Verde Drive
Palos Verde, Co: Los Angeles CA 90274–
Landholding Agency: DOT
Property Number: 879140009
Status: Excess.
Reason: Secured area.

Operations Bldg.
Former Long Beach Radio Station
Palos Verde Drive
Palos Verde, Co: Los Angeles CA 90274–
Landholding Agency: DOT
Property Number: 879140010
Status: Excess.
Reason: Secured area.

Hawaii

14 Bldgs.
USCG Base Honolulu
Sand Island
Honolulu, Co: Honolulu HI 96819–4398
Landholding Agency: DOT
Property Number: 879140011–879140024
Status: Excess.
Reason: Secured area. Within 2000 ft. of flammable or explosive material.

New York

Bldgs. 272, 888
Griffiss Air Force Base
Rome, Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Number: 189140022–189140023
Status: Excess.
Reason: Secured area.

North Carolina

Bldg. 9
VA Medical Center
1100 Tunnel Road
Asheville, Co: Buncombe NC 28805–
Landholding Agency: VA
Property Number: 979010008
Status: Underutilized.
Reason: Other.
Comment: Friable asbestos.

Oregon

USCG Air Station North Bend
2000 Connecticut Avenue
North Bend, Co: Coos OR 97549–2399
Landholding Agency: DOT
Property Number: 879140001
Status: Excess.
Reason: Secured area.

Texas

Bldgs. 24–26
Olin E. Teague Veterans Center
1901 South 1st Street
Temple, Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 979010050–979010052
Status: Unutilized.
Reason: Other
Comment: Friable asbestos.

Washington

Garage
USCG Station Cape Disappointment
Foot of Canby Road
Ilwaco, Co: Pacific WA 98624–0460
Landholding Agency: DOT
Property Number: 879140005
Status: Excess.
Reason: Secured area.

Equipment Bldg.
USCG Station Cape Disappointment
Foot of Canby Road
Ilwaco, Co: Pacific WA 98624–0460
Landholding Agency: DOT
Property Number: 879140006
Status: Excess.
Reason: Secured area.

Wyoming

Bldg. 95
Medical Center
N.W. of town at the end of Fort Road
Sheridan, Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110004
Status: Unutilized.
Reason: Other
Comment: Sewage digester for disposal plant.

Bldg. 96
Medical Center
N.W. of town at end of Fort Road
Sheridan, Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110005
Status: Unutilized.
Reason: Other
Comment: Pump house for sewage disposal plant.

Structure 99
Medical Center
N.W. of town at the end of Fort Road
Sheridan, Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110006
Status: Unutilized.
Reason: Other
Comment: Mechanical screen for sewage disposal plant.

Structure 100
Medical Center
N.W. of town at the end of Fort Road
Sheridan, Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110007
Status: Unutilized.
Reason: Other
Comment: Dosing tank for sewage disposal plant.

Structure 101
Medical Center
N.W. of town at the end of Fort Road
Sheridan, Co: Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979110008
Status: Unutilized.
Reason: Other
Comment: Chlorination chamber for sewage disposal plant.

Land (by State)

California

DVA Medical Center
4951 Arroyo Road
Livermore, Co: Alameda CA 94550–
Landholding Agency: VA
Property Number: 979010023
Status: Unutilized.
Reason: Other
Comment: 750,000 pal water reservoir.

Louisiana

Land—3.4 acres
VA Medical Center
2501 Shreveport Highway
Alexandria, Co: Rapides LA 71301–
Landholding Agency: VA
Property Number: 979010010
Status: Unutilized.
Reason: Within 2000 ft. of flammable or explosive material.

Minnesota

VAMC
Va Medical Center
4801 8th Street No.
St. Cloud, CO: Sterns MN 56303–
Landholding Agency: VA
Property Number: 979010049
Status: Underutilized.
Reason: Within 2000 ft. of flammable or explosive material

New York

Tracts 1–4
VA Medical Center
Bath, Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.

Landholding Agency: VA
Property Number: 979010011–979010014
Status: Unutilized.
Reason: Secured area

North Dakota

VAM & ROC—Land—6.1 acres
2101 Elm Street, N.
Fargo, Co: Cass ND 58102–
Landholding Agency: VA
Property Number: 979010018
Status: Underutilized.
Reason: Floodway.

VAM & Roc—Land—8.9 acres
2101 Elm Street, N.
Fargo, Co: Cass ND 58102–
Landholding Agency: VA
Property Number: 979010019
Status: Underutilized.
Reason: Floodway.

[FR Doc. 91–30845 Filed 12–26–91; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–08–4120–11; NDM 80399]

Coal Exploration License Application

AGENCY: Montana State Office, Bureau of Land Management, Interior.

ACTION: Notice of Invitation.

Coal Exploration License Application NDM 80399

Members of the public are hereby invited to participate with Estevan Coal Corporation in a program for the exploration of coal deposits owned by the United States of America in the following-described lands located in Divide County, North Dakota:

T. 163 N., R. 102 W., 5th P.M.
Sec. 4: SW¼NW¼
Sec. 9: NW¼NW¼
Sec. 17: NW¼NW¼
Sec. 20: NW¼NW¼
T. 163 N., R. 103 W., 5th P.M.
Sec. 2: SW¼SW¼
Sec. 10: Lot 1
Sec. 12: NW¼NW¼
Sec. 14: NW¼NE¼, NW¼NW¼
Sec. 15: Lots 1 and 4
Sec. 23: NW¼NW¼, NW¼SW¼
Sec. 25: NW¼NW¼
Sec. 26: SW¼NW¼
Sec. 27: Lots 1 and 2
T. 164 N., R. 103 W., 5th P.M.
Sec. 34: Lot 2, SE¼NE¼
Sec. 35: NW¼NW¼
700.62 acres—Divide County.

Any party electing to participate in this exploration program shall notify, in writing, both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107–6800; and Estevan Coal Corporation, 1600 Oxford Tower, 10235—101 Street, Edmonton, Alberta, Canada T5J3G1. Such written notice must refer to serial number NDM 80399 and be received no later than 30 calendar days after publication of this notice in the **Federal Register** or 10 calendar days after the last publication of this notice in The Journal, whichever is later. This Notice will be published once a week for 2 consecutive weeks.

The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. A copy of the exploration plan as submitted by Estevan Coal Corporation is available for public inspection at the Bureau of Land Management, Montana State Office, Granite Tower Building, 222 North 32nd Street, Billings, Montana during regular business hours (9 a.m. to 4 p.m.) Monday through Friday.

Dated: December 17, 1991.
Thomas P. Lonnie,
Acting State Director.
[FR Doc. 91–30935 Filed 12–26–91; 8:45 am]
BILLING CODE 4310–DN–M

[AZ–050–4331–02]

Arizona: Yuma District Advisory Council; Meeting

AGENCY: Bureau of Land Management; Interior.

ACTION: Yuma (Arizona) District Advisory Council Meeting.

FOR FURTHER INFORMATION CONTACT: Jeanette Davis, Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365, 602–726–6300.

SUPPLEMENTARY INFORMATION: A meeting of the Yuma District Advisory Council will be held Wednesday, February 12, 1991, 10 a.m. to 4 p.m. in the Bureau of Land Management Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona. The agenda will include: (1) Lake Havasu Fish Habitat Plan; (2) Parker Strip Visitor Center and boat ramp; (3) Wilderness Area Management Plans; (4) Verdstone Mine environmental assessment process; (5) Arizona State boundary realignment.

Following the meeting, members will participate in a field tour of the long-term visitor area, returning to the Yuma District Office at 4 p.m.

The public is invited to attend the meeting and the field trip, but must provide their own transportation. Interested persons may make oral statements to the council or file written statements for the council's consideration. Anyone wishing to make oral statements should make prior arrangements with the District Manager. Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

Dated: December 17, 1991.
Herman L. Kast,
District Manager.
[FR Doc. 91–30936 Filed 12–26–91; 8:45 am]
BILLING CODE 4310–32–M

[WY–920–41–5700; WYW100480]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Public Law 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW100480 for lands in Washakie County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW100480 effective June 1, 1991, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Florence R. Speltz,
Supervisory Land Law Examiner.
[FR Doc. 91–30937 Filed 12–26–91; 8:45 am]
BILLING CODE 4310–22–M

[ID–942–02–4730–12]

Idaho: Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m., December 19, 1991.

The plat representing the dependent resurvey of portions of the subdivisional lines, Mineral Survey No. 2153, and the 1902–1906 meander lines of the right and left banks of the Salmon River, the subdivision of section 14, the survey of the 1990–1991 meander lines of the right and left banks of the Salmon River, and

the land inside a portion of the 1904 meander lines of the Salmon River in section 14, T. 24 N., R. 1 E., Boise Meridian, Idaho, Group No. 801, was accepted, December 17, 1991.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: December 19, 1991.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

DEPARTMENT OF THE INTERIOR

[AZ-930-4214-10; AZA-26088, AZA-26089]

Proposed Withdrawal and Opportunity for Public Meeting; Arizona

December 16, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed two applications to withdraw approximately 680 acres (AZA-26088 for 666.73 acres and AZA-26089 for 10.00 acres) of National Forest System lands for the protection of the existing Parker Canyon Lake Complex and the Carr Barn Administrative Site. This notice closes the lands for up to 2 years from location and entry under the United States mining laws. The lands will remain open to all uses other than the mining laws.

DATES: Comments and requests for a meeting should be received on or before March 27, 1992.

ADDRESSES: Comments and meeting requests should be sent to the Arizona State Director, Bureau of Land Management (BLM), 3707 N. 7th Street, Phoenix, Arizona 85014, or P.O. Box 16563, Phoenix, Arizona 85011-6563.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, (602) 640-5509.

SUPPLEMENTARY INFORMATION: On November 12 and 13, 1991, the U.S. Department of Agriculture, Forest Service, filed two applications to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Gila and Salt River Meridian; Coronado National Forest

T. 23 S., R. 19 E., (Parker Canyon Lake Complex, AZA-26088)

Sec. 18, Lots 1 and 2, 4 through 7 and 9, SW¼NE¼, E½NW¼, W½NE¼SE¼, W½E1/2, NE¼SW¼, HES 291;
Sec. 19, Lots 1 through 3, NE¼NE¼.

T. 21 S., R. 21 E., (Carr Barn Administrative Site, AZA-26089)

Sec. 7, SE¼NE¼NW¼.

The areas described aggregate 676.73 acres in Cochise County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawals may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawals. All interested persons who desire a public meeting for the purpose of being heard on the subject must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The applications will be processed in accordance with regulations as set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless an application is denied or cancelled or the withdrawals are approved prior to that date. The temporary uses which will be permitted during this segregative period are all those applicable to U.S. Forest Service administered lands except those under the mining laws.

The temporary segregation of the lands in connection with these applications shall not affect the administrative jurisdiction over the lands.

Phillip D. Moreland,

Acting Deputy State Director, Lands and Renewable Resources.

[FR Doc. 91-30872 Filed 12-26-91; 8:45 am]

BILLING CODE 4310-32-M

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for the Virginia Spiraea for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft Virginia Spiraea Recovery Plan. This threatened plant occurs on public and private lands in Georgia, Kentucky, North Carolina, Tennessee, Virginia, and West Virginia. The Service solicits review and comment from the public on this draft Plan.

DATES: Comments on the draft Recovery Plan must be received on or before February 25, 1992, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft Recovery Plan may obtain a copy from the Northeast Regional Office, U.S. Fish and Wildlife Service, One Gateway Center, suite 700, Newton Corner, Massachusetts 02158 (617/965-5100 ext. 316) or the West Virginia Field Office, U.S. Fish and Wildlife Service, Route 250 South, Elkins Shopping Plaza, Elkins, West Virginia 26241 (304/636-6586). Comments on the plan should be addressed to Mary Parkin at the Northeast Regional Office at the above address. The plan is available for public inspection, by appointment, during normal business hours at the above addresses.

FOR FURTHER INFORMATION CONTACT: Mary Parkin (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare Recovery Plans for most of the listed species native to the United States. Recovery Plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of Recovery Plans for listed species unless such a Plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during Recovery Plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these

comments into account in the course of implementing Recovery Plans.

The document submitted for review is the draft Virginia Spiraea (*Spiraea virginiana*) Recovery Plan. This perennial shrub species consists of 30 stream populations in six mid-Atlantic and southeastern states, down from 37 populations in eight states. The plant is threatened by a small overall population size, a paucity of sexual reproduction and dispersal, and manipulation of its riverine habitat. The Virginia spiraea was listed as federally threatened in June of 1990.

The species is typically found in disturbed sites along rivers and streams, with the sole exception being a population found in a wet meadow site in West Virginia. The plant requires sufficient disturbance to inhibit arboreal competition, yet without the scour activity that will remove most organic material or clones.

The recovery objective is to return the species to a level that will ensure its continued existence in the wild on a self-sustaining basis. This will be accomplished through protecting and managing extant populations, maintaining captive populations and conducting reintroduction efforts, searching for additional populations, research, and implementing information and education programs. If the recovery objective is met, delisting of the Virginia spiraea will be considered.

This Recovery Plan is being submitted for technical/agency review. After consideration of comments received during the review period, the Plan will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the Recovery Plan described. All comments received by the date specified above will be considered prior to approval of the Plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 16, 1991.

Nancy M. Kaufman,

Acting Regional Director.

[FR Doc. 91-30811 Filed 12-26-91; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Technical/Agency Draft Recovery Plan for the Puerto Rican Crested Toad (Peltophryne lemur) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for the Puerto Rican Crested Toad (Peltophryne lemur).

DATES: Comments on the draft recovery plan must be received on or before February 25, 1992, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Southeast Regional Office, Richard B. Russell Federal Building, 75 Spring Streets SW., Atlanta, Georgia 30303. Written comments and materials regarding the plan should be addressed to Field Supervisor, Caribbean Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received are available upon request for public inspection, by appointment, during normal business hours at either of the above-mentioned address.

FOR FURTHER INFORMATION CONTACT: Ms. Gloria Lee, Caribbean Field Office, P.O. Box 491, Boquerón, PR 00622 (809/851-7297).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

This Technical/Agency draft is for the Puerto Rican crested toad (Peltophryne lemur), a medium-sized toad endemic to Puerto Rico. Historically, the species was found in nine locations in Puerto Rico and in one location in Virgin Gorda, British Virgin Islands. The Puerto Rican crested toad inhabits low-elevation arid or semi-arid, rocky areas with an abundance of limestone fissures and cavities in well drained soil. Habitat loss from urban, tourist, and agricultural expansion, and predation are the principal threats. At present, the species is found in the Guánica Commonwealth Forest and the Quebradillas-Isabela area.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 20, 1991.

James P. Oland,

Field Supervisor.

[FR Doc. 91-30934 Filed 12-26-91; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Draft Recovery Plan for the Cahaba Shiner, (Notropis cahabae) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Cahaba shiner, (*Notropis cahabae*). This species occurs in the Cahaba River in Perry, Bibb, and Shelby Counties, Alabama. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before February 25, 1992 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi 39213. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jim Stewart at the above address (601/965–4900).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery palns for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is the Cahaba shiner, (*Notropis cahabae*). The area of emphasis is the Cahaba River from Helena, Alabama for a distance of 76 river miles downstream. The entire known historic range of this species is contained within this river reach.

The primary goal of the recovery plan is to recover this species to the point where it can be reclassified as threatened. Since the species is restricted to the main stream Cahaba River, Alabama, is rarely found in 80 percent of its historic range, and its habitat is threatened by development of the City of Birmingham and smaller suburban communities, it will likely be several years before this species can be considered for reclassification.

Recovery efforts will focus on maintaining the current population and restoration of habitat. Recovery tasks include conducting population surveys, determining the impacts of permitted effluents, protecting and restoring historic habit, and determining life history requirements.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 18, 1991.

Robert Bowker,

Complex Field Supervisor.

[FR Doc. 91–30954 Filed 12–26–91; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Concession Services Plan, Yosemite National Park; Availability of Draft Plan and Supplemental Environmental Impact Statement to the Final General Management Plan and Environmental Impact Statement

SUMMARY: In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91–190, the National Park Service has prepared a Draft Concession Services Plan/Supplemental Environmental Impact Statement (EIS) to the 1980 Final General Management Plan/Environmental Impact Statement (GMP/EIS) for Yosemite National Park, Tuolumne, Mariposa and Madera Counties, California. The draft plan/supplemental EIS further defines and analyzes the management of concession services in Yosemite National Park and focuses on means to implement the goals outlined for concession services in the 1980 final GMP/EIS section entitled "Visitor Use/Park/Operations/Development."

Two alternatives are identified and evaluated. Alternative A would implement the concession services action items as written in the 1980 GMP/EIS. Alternative B, the proposal, would implement the 1980 GMP action items with certain revisions that would amend the 1980 GMP for concession services actions only.

SUPPLEMENTARY INFORMATION: Comments on the draft plan and supplemental EIS should be received no later than February 28, 1992 and should be addressed to: Superintendent, Yosemite National Park, P.O. Box 577, Yosemite National Park, CA 95389. Requests for additional information and/or copies of the draft plan/supplemental EIS should be directed to this address or telephone number (209) 372–0201. In addition, comments will be received at the following public meetings:

1/29/92, 7:00P—Los Angeles, CA, Univ. of Southern California, Davidson Conference Center, Figueroa and Jefferson Streets
1/30/92, 7:00P—Fresno, CA, Sanger Room, Convention Center, Ventura Ave. and "O" St.
1/31/92, 7:00P—San Francisco, CA, Fort Mason, Bldg. 201
2/1/92, 1:00P—Yosemite National Park, CA. East Auditorium, Yosemite Valley

Copies of the draft plan/supplemental EIS are available at the park headquarters and at libraries in Bishop, Bridgeport, Fresno, Los Angeles, Mariposa, Merced, Modesto, San Francisco and Sonora, CA. Copies also are available for inspection at the following address: Western Regional Office, National Park Service, Division of Planning, Grants and Environmental Quality, 600 Harrison St., suite 600, San Francisco, CA 94107–1372.

Dated: December 6, 1991.

Lewis Albert,

Acting Regional Director, Western Region.

[FR Doc. 91–31002 Filed 12–26–91; 8:45 am]

BILLING CODE 4310–70–M

Delaware and Lehigh Navigation Canal National Heritage Corridor

AGENCY: National Park Service; Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

DATES: February 3, 1992 1:30 p.m.

INCLEMENT WEATHER RESCHEDULE DATE: None.

ADDRESSES: Zinc Environmental Information Center, 480 Delaware Avenue, Palmerton, PA.

FOR FURTHER INFORMATION CONTACT: Millie Alvarez, Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 10 East Church Street, Room P–208, Bethlehem, PA 18018 (215) 861–9345.

SUPPLEMENTARY INFORMATION: The Commission was established by PL 100–692 to assist the Commonwealth and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historical and natural resources. The Commission will report to the Secretary of the Interior and to Congress. The agenda for the meeting will focus on the planning process.

The meeting will be open to the public. Any member of the public may file a written statement concerning agenda items. The statement should be addressed to National Park Service, Mid-Atlantic Regional Office, Division of Park and Resource Planning, 260 Custom House, 200 Chestnut Street, Philadelphia, PA, 19106, attention: Deirdre Gibson.

Minutes of the meeting will be available for inspection four weeks after the meeting, at the above-named address.

Charles P. Clapper,

Regional Director, Mid-Atlantic Region.

[FR Doc. 91-31001 Filed 12-26-91; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-518 (Final)]

Aspherical Ophthalmoscopy Lenses From Japan

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: Date of Commission action.

FOR FURTHER INFORMATION CONTACT: Olympia DeRosa Hand (202-205-3182), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION: On October 15, 1991, the Commission instituted the subject investigation and established a schedule for its conduct (56 FR 56660). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from January 22, 1992, to February 21, 1992. The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule.

The Commission's new schedule for the investigation is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than February 19, 1992; the prehearing conference will be held at the U.S. International Trade Commission Building on February 24, 1992; the prehearing staff report will be placed in the nonpublic record on February 14, 1992; the deadline for filing prehearing briefs in February 24, 1992; the hearing will be held at the U.S. International Trade Commission Building on February 27, 1992; and the deadline for filing posthearing briefs is March 6, 1992.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: December 20, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-30879 Filed 12-26-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-516 (Final)]

Fresh Kiwifruit From New Zealand

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-516 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from New Zealand of fresh kiwifruit, provided for in subheading 0810.90.20 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: November 26, 1991.

FOR FURTHER INFORMATION CONTACT: Jeff Doidge (202-205-3183), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of fresh kiwifruit from New Zealand are being sold in the United States at less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The investigation was requested in a petition filed on April 25, 1991, by the Ad Hoc Committee for Fair Trade of the California Kiwifruit Commission and Individual California Kiwifruit Growers, Sacramento, CA.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, not later twenty-one (21) days after publication of this notice in the **Federal Register.** The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register.** A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on March 30, 1992, and a public version will be issued thereafter, pursuant to section 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on April 14, 1992,

at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 7, 1992. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 9, 1992, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is April 9, 1992. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is April 22, 1992; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before April 22, 1992. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: December 20, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-30878 Filed 12-26-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-312 (Preliminary)]

Softwood Lumber From Canada

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Canada of softwood lumber,[3] provided for in subheadings 4407.10.00, 4409.10.10, 4409.10.20, and 4409.10.90 of the Harmonized Tariff Schedule of the United States (HTS), that are alleged to be subsidized by the Government of Canada.

Background

On October 31, 1991, the U.S. Department of Commerce published in the **Federal Register** [4] a notice that it was self initiating a countervailing duty investigation to determine whether subsidies are being provided, or are likely to be provided, to manufacturers, producers, or exporters of certain softwood lumber products in Canada. Accordingly, effective October 31, 1991, the Commission instituted countervailing duty investigation No. 701-TA-312 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 6, 1991 (56 FR 56661). The conference was held in Washington, DC, on November 21, 1991, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 16, 1991. The views of the Commission are contained in USITC Publication 2468 (December 1991), entitled "Softwood Lumber from Canada: Determination of the Commission in Investigation No. 701-TA-312 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: December 20, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-30880 Filed 12-26-91; 8:45 am]

BILLING CODE 7020-02-M

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[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioners Lodwick, Crawford, and Nuzum did not participate.

[3] For purposes of this investigation, "softwood lumber" means coniferous wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 mm, provided for in subheading 4407.10.00 of the HTS; and coniferous wood siding, flooring and other goods (except coniferous wood moldings and wood dowel rods; but including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated (rabbeted), chamfered, V-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed, provided for in HTS subheadings 4409.10.10, 4409.10.20 and 4409.10.90.

[4] 56 FR 56055, Oct. 31, 1991.

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

December 23, 1991.

The following notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the notice, Form BOP 102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) Lewiston Grain Growers, Inc.

(2) P.O. Box 467, Lewiston, ID 83501.

(3) 1200 Snake River Ave., Lewiston, ID 83501.

(4) David P. Hanson, P.O. Box 467, Lewiston, ID 83501.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-30926 Filed 12-26-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Notice of Consent Judgment in Action to Enjoin Violation of the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Consent Decree in *United States* v. *AroChem International Inc.* ("AROCHEM"), (D.P.R.), Civil Action No. 91-2549 (CC), was lodged with the United States District Court for the District of Puerto Rico on December 13, 1991. The Consent Decree provides for penalties for violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the National Pollutant Discharge Elimination System ("NPDES") permit no. PR0000345 as modified by NPDES permit no. PR0025666. The Consent Decree also requires AROCHEM to conduct certain remedial actions in order to achieve compliance with the effluent limitations in its NPDES permit. AROCHEM must construct a biological wastewater treatment system and a metals removal wastewater treatment system, modify its stormwater management practices.

The Department of Justice will receive, for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comment should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530 and should refer to *United States* v. *AroChem International Inc.*, D.O.J. Ref. No. 90-5-1-1-3678.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Puerto Rico, Federal Office Building Carlos E. Chardon Avenue, Hato Rey, Puerto Rico 00918; at the Region II office of the Environmental Protection Agency, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York, 10278, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Washington DC 20004 (202-347-2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $3.75 (25 cents per page reproduction charge) payable to Consent Decree Library.

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91-30939 Filed 12-26-91; 8:45 am]

BILLING CODE 4410-01-M

Avco Corp.; Notice of Consent Judgment in an Action to Enjoin Violations of the Clean Air Act ("CAA")

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Consent Decree in *United States* v. *Avco Corp.; Textron Lycoming Div.; William B. Meyer Rigging, Inc.; Lorene Mattes, Thomas Dolan, Sally Gillon, Nancy Tsiaras and Stephen Lang as Trustees; Asbestos Abatement & Insulation Servs., Inc.; and Logano Trucking, Inc.*, ("Defendants"), (D. Conn.), Civil Action No. N-90-174 (WWE) was lodged with the United States District Court for the District of Connecticut on December 19, 1991. The Consent Decree provides for penalties for violations of section 112 of the Clean Air Act, 42 U.S.C. 7412, and the National Emission Standard for Hazardous Air Pollutants for asbestos ("NESHAPs"). The Consent Decree also requires Defendants to comply with stringent injunctive requirements in the following areas: Notification; sampling; inspection; awareness training; worker training; and appointment of an Asbestos Program Manager and an On-Site Supervisor.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Avco Corp., et al.* D.O.J. Ref. No. 90-5-2-1-1436.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Connecticut, 141 Church Street, New Haven, Connecticut 06510; at the Region I office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts 02203; and, at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Washington, DC 20004 (202-347-2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $3.75 (25 cents per page reproduction charge) payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 91-30941 Filed 12-26-91; 8:45 am]

BILLING CODE 4410-01-M

Schuylkill Metals of Plant City, Inc.; Lodging of Consent Decree Pursuant to Superfund (CERCLA)

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on December 18, 1991, a proposed Consent Decree in *United States* v. *Schuylkill Metals of Plant City, Inc.* was lodged with the United States District Court for the Middle District of Florida. The complaint in this action seeks injunctive relief and recovery of costs under sections 106 and 107(a) of the Comprehesive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, 42 U.S.C. 9607(a). This action concerns the Superfund Site known as the Schuylkill Metals Corporation Site, located in Plant City, Florida.

Under the proposed Consent Decree, the six settling defendants will: (1) Perform the selected remedy at the Site, which generally requires remediation of all contamination at the Site, and specifically requires excavation and on-site solidification of contaminated soils, treatment of contaminated surface water and groundwater, and wetlands maintenance and mitigation, at a total estimated cost of over $6.2 million, not including the cost of the required wetlands mitigation; (2) reimburse the United States for all of its past response costs ($341,885.14); and (3) reimburse the United States for all future response and oversight costs incurred in connection with defendant's performance of the remedy under the Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Schuylkill Metals of Plant City, Inc.*, (Schuylkill Metals Corporation Site), D.J. Ref. 90-11-3-688.

The proposed Consent Decree may be examined at any of the following offices: (1) The Office of the United States Attorney for the Middle District of Florida, Robert Timberlake Bldg., Suite 400, 500 Zack Street, Tampa, Florida; (2) the U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE., Atlanta, Georgia; and (3) the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004 (telephone (202) 347–2072). Copies of the proposed Decree may be obtained by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., P.O. Box 1097, Washington, DC 20004. Please enclose a check for $46.00 ($.25 per page reproduction charge) payable to "Consent Decree Library."

Barry M. Hartman,

Acting Assistant Attorney General Environment & Natural Resources Division.

[FR Doc. 91–30940 Filed 12–26–91; 8:45 am]

BILLING CODE 4410–01–M

Consent Decree in Clean Water Act Enforcement Action

In accordance with the Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *Sun Refining and Marketing Co.*, Civil ACtion No. 91–C–954 B, was lodged with the United States District Court for the Northern District of Oklahoma on December 12, 1991. This Consent Decree concerns a Complaint filed by the United States against Sun Refining and Marketing, Inc. (Sun), Tulsa, Oklahoma, pursuant to section 309 of the Clean Water Act for Sun's violation of the effluent limits established in its National Pollutant Discharge Elimination System (NPDES) permit and its violation of the Clean Water Act. The Complaint seeks injunctive relief requiring Sun to comply with the terms and conditions of its NPDES permit and to comply with the Clean Water Act.

The proposed Consent Decree requires that Sun implement a compliance plan designed to achieve and maintain compliance with its NPDES permit and the Act. The proposed Consent Decree also requires Sun to pay a civil penalty of $400,000 for its past violations of the requirements of its permit and of the Act, and to pay stipulated penalties for violations of the terms of the proposed Consent Decree.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *United States* v. *Sun Refining and Marketing Co.*, 90–5–1–1–3442.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of Oklahoma, 3600 U.S. Courthouse, 333 West Fourth Street, Tulsa, Oklahoma, 74103 and at the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave, NW., Box 1097, Washington, DC 20004, (202) 347–7829. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. When requesting a copy of the Consent Decree, please enclose a check in the amount of $5.00 payable to the "Consent Decree Library."

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 91–30953 Filed 12–26–91; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encourged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution

Avenue, NW., room S-3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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- FL91-15 (Feb. 22, 1991)..... p. 135, pp. 136-138
- FL91-17 (Feb. 22, 1991)..... p. 141, pp. 142-143

Kentucky:
- KY91-1 (Feb. 22, 1991)..... p. 309, pp. 310-312b
- KY91-2 (Feb. 22, 1991)..... p. 313, pp. 314-318
- KY91-3 (Feb. 22, 1991)..... p. 319, p. 320
- KY91-4 (Feb. 22, 1991)..... p. 325, pp. 326-330b
- KY91-5 (Feb. 22, 1991)..... p. 331, pp. 332-335
- KY91-6 (Feb. 22, 1991)..... p. 337, p. 338
- KY91-7 (Feb. 22, 1991)..... p. 343, p. 344
- KY91-29 (Feb. 22, 1991).... p. 403, pp. 404-420

Maryland, MD91-17 (Feb. 22, 1991). p. all

Mississippi:
- MS91-3 (Feb. 22, 1991)..... p. all
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- NY91-7 (Feb. 22, 1991)..... p. 837, p. 838
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- PA91-13 (Feb. 22, 1991)..... p. 1061, p. 1062
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- PA91-15 (Feb. 22, 1991)..... p. 1073, p. 1074
- PA91-17 (Feb. 22, 1991)..... p. 1079, p. 1080
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- UT91-8 (Feb. 22, 1991)..... p. all
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- UT91-11 (Feb. 22, 1991).... p. 437, p. 438
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 20th day of December 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91-30840 Filed 12-26-91; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

AGFA Corp., et al; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other person showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 6, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 6, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 16th day of December 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
AGFA Corp (Wkrs)	West Caldwell, NJ	12/16/91	12/05/91	26,656	Coating, Converting of Photo Paper
Arco Oil and Gas Co (Wkrs)	Houston, TX	12/16/91	11/21/91	26,657	Oil, Gas Exploration.
Atlas Wireline Services (Co)	Broussard, LA 70518	12/16/91	12/04/91	26,658	Oilfield Service.
Bethlehem Steel Corp (Beth. Forge) (Wkrs)	Bethlehem, PA	12/16/91	12/04/91	26,659	Steel Products—Rotors.
Bethlehem Steel Corp (Mach. Shop) (Wkrs)	Bethlehem, PA	12/16/91	12/04/91	26,660	Steel Products—Rotors.
Bridgeport Machine, Inc (Co)	Bridgeport, Ct	12/16/91	12/02/91	26,661	Vertical Milling Machines.
Brunswick Corp (URW)	Willard, OH	12/16/91	12/03/91	26,662	Multi-Dipped Butyl Glove.
Compaq Computer Corp (Wkrs)	Houston, TX	12/16/91	12/02/91	26,663	Personal Computers.
David Warren Enterprises, Inc (Co)	New York, NY	12/16/91	12/10/91	26,664	Ladies Dresses.
Dowell Schlumberger, Inc. (CO)	Houston, TX	12/16/91	12/16/91	26,665	Oil and Gas.
Exxon Company, U.S.A. (Wkrs)	Denver, CO	12/16/91	12/04/91	26,666	Oil and Gas Exploration.
Grace Drilling (Wkrs)	Oklahoma City, OK	12/16/91	12/04/91	26,667	Oil.
J.F. Pleating, Inc ILGWU	East Newark, NJ	12/16/91	12/04/91	26,668	Binding and Pleating.
Lance Corp (The) (Co)	Durham, NH	12/16/91	11/26/91	26,669	Giftware.
Lermer Corp (Wkrs)	Eatontown, NJ	12/16/91	11/27/91	26,670	Airline Carts for meals, beverage.
Massena Sportswear Inc. (Co)	Massena, NY	12/16/91	12/02/91	26,671	Skiwear.
Meilink Safe (Wkrs)	Whitehouse, OH	12/16/91	11/22/91	26,672	Safes.
Molly Fasteners (IAM)	Temple, PA	12/16/91	12/10/91	26,673	Anchors.
Occidental Chemical Corp North ABGWIU	Burlington, NJ	12/16/91	12/09/91	26,674	Vinyl Sheeting and Plastics.
Par Directional Drilling, Inc. (Co)	Lafayette, LA	12/16/91	12/01/91	26,675	Oil Drilling.
Prairie Manufacturing ACTWU	East Prairie, MO	12/16/91	12/03/91	26,676	Uniforms.
Smith Victor Corp (Wkrs)	Griffith, IN	12/16/91	12/05/91	26,677	Photographic Lighting Equipment.
UDT Sensors, Inc (Co)	El Paso, TX	12/16/91	12/06/91	26,678	Micro Miniature Opto Electronics.
Unison Transformer Services, Inc (Wkrs)	Allentown, PA	12/16/91	11/26/91	26,679	PCB Transformers.
Val Mode, Inc. (UGW)	Prichard, AL	12/16/91	11/12/91	26,680	Ladies Sleepwear.
* Rockwell Intl. Corp. (Reopened (USW))	New Castle, PA	12/16/91	12/09/91	25,608	Front Axle Component.

[FR Doc. 91-30995 Filed 12-26-91; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-26,434]

Hewlett-Packard Co., Rockaway, NJ; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Hewlett-Packard Company, Rockaway, New Jersey. The review indicated that the appplication contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-26,434; Hewlett-Packard Company, Rockaway, New Jersey (December 11, 1991).

Signed at Washington, DC this 18th day of December, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-30996 Filed 12-26-91; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of December 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,444; RC Industries, New Brunswick, NJ.

TA-W-26,182; Fujitsu America, Inc., Palm Bay, FL.

TA-W-26,178; Crouse-Hinds Molded Products, Cincinnati, OH.

TA-W-26,465; Harris Semiconductor, Mountaintop, PA.

TA-W-26,357; Esco Corp, Proprietary Products Group, Portland, OR.

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-26,484; Dedoes Industries, Inc., Ossineke, MI

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,492; Quebecor Printing, Fridley, MN

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-26,438; Maple Gas Corp., Fritch, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-26,460 & TA-W-26,461; Dynapac Manufacturing, Hackettstown, NJ and Scjertz, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-26,447; Tuboscope, Inc., Rocky Mountain Coating Plant, Mills, WY

The workers' firm does not produce an article as required for certification

under section 222 of the Trade Act of 1974.

TA-W-26,429; Echo Bay Mines, Republic, WA

U.S. imports of gold declined absolutely and relative to domestic shipment in 1990 compared with 1989.

TA-W-26,311; Smith International, Inc., Houston, TX

U.S. imports of oil and gas field machinery were negligible.

TA-W-26,450; Dresser Pump Div., Harrison, NY

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,420; US Metalsource Corp., Buffalo, NY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-26,406; Eberhard Manufacturing Co., Strongsville, OH

The investigation revealed that criterion (1) has not been met. Significant number or proportion of the workers did not become totally or partially separated as required for certification.

TA-W-26,402; Air Crusers Co., Belmar, NJ

The investigation revealed that criterion (1) has not been met. Significant number or proportion of the workers did not become totally or partially separated as required for certification.

TA-W-26,473; WSI, Inc., dba Weaver Wireline Services, Inc., Synder, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period a required for certification.

TA-W-26,463; GLK Contract Services, Inc., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-26,446; Stroehmann Bakeries, Inc., Washington Blvd, Williamsport, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,427; Digital Equipment Corp., Colorado Springs, CO

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,309; Shell Oil Co Products Organization, Houston, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-26,477; Argus Dress, Inc., Albany, NY

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-26,317; Armco Specialty Steel, dba Baltimore Specialty Steel, Baltimore, MD

U.S. imports of semi-finished steel products declined absolutely and relative to domestic shipment in the first nine months of 1991 compared to the same period in 1990. U.S. imports of wire rod declined absolutely and relative to domestic shipment in 1990 compared to 1989 and in the first eight months of 1991 compared to the same period in 1990.

Affirmative Determinations

TA-W-26,387; Junior Form Lingerie, Inc., Somerset, PA

A certification was issued covering all workers separated on or after September 19, 990 and before November 1, 1991.

TA-W-26,507; Elenburg Exploration, Inc., Casper, WY

A certification was issued covering all workers separated on or after January 1, 1991.

TA-W-26,358; General Electric Co (Cable Wire & Harness Section), Syracuse, NY

A certification was issued covering all workers separated on or after September 9, 1990.

TA-W-26,376; Witco Corp., Richardson Battery Parts Div., Indianapolis, IN

A certification was issued covering all workers separated on or after August 1, 1991.

TA-W-26,179; Eaglewear, Inc., Gallitzin, PA

A certification was issued covering all workers separated on or after August 1, 1990.

TA-W-26,396; Somerset Manufacturing Co., Inc., Somerset, PA

A certification was issued covering all workers separated on or after September 13, 1990 and before November 1, 1991.

TA-W-26,363; Holiday Fashions, Slatedale, PA

A certification was issued covering all workers separated on or after September 12, 1990.

TA-W-26,277; The Monarch Machine Tool Co., Monarch Sidney Div., Sidney, OH

A certification was issued covering all workers separated on or after September 3, 1990.

TA-W-26,432 & TA-W-26,433; Halliburton Logging Services, Inc., Farmington, NM and Abilene, TX

A certification was issued covering all workers separated on or after January 1, 1991.

TA-W-26,542; Melsig Dress Dinc., Union City, NJ

A certification was issued covering all workers separated on or after October 29, 1990.

TA-W-26,405; Construction Specialties, Inc., Cranford, NY

A certification was issued covering all workers separated on or after September 16, 1991 and before February 28, 1992.

TA-W-26,464; Halliburton Logging Services, Inc., Midland, TX

A certification was issued covering all workers separated on or after January 1, 1991.

TA-W-26,317; Armco Specialty Steel dba Baltimore Specialty, Baltimore, MD

A certification was issued covering all workers engaged in the production of stainless steel bar separated on or after September 5, 1990.

TA-W-26,441, TA-W-26,442 and TA-W-26,443; Quarles Drilling Corp., Tulsa, OK, Wheatland, OK and Belle Chasse, LA

A certification was issued covering all workers separated on or after January 1, 1991.

TA-W-26,457; Dowell Schlmberger, Inc., Western Div., Englewood, CO and Operating at Various Locations in the Following States:

TA-W-26,457A AK
TA-W-26,457B CA
TA-W-26,457C CO (Except Englewood)
TA-W-26,457D NM
TA-W-26,457E ND
TA-W-26,457F UT
TA-W-26,457G WY

A certification was issued covering all workers separated on or after February 15, 1991.

TA-W-26,428; Drilling Measurements, Inc., Brousssard, LA and Operating at Various Locations in the Following States:

TA-W-26,428A Houma, LA
TA-W-26,428B New Orleans, LA
TA-W-26,428C Pearsall, TX
TA-W-26,428D Midland, TX

A certification was issued covering all workers separated on or after January 1, 1991.

TA-W-26,281; Shell Oil Co., Shell Offshore, Inc., New Orleans, LA

A certification was issued covering all workers separated on or after September 15, 1991.

TA–W–26,305; Shell Oil Co., Administration, Houston, TX

A certification was issued covering all workers separated on or after September 15, 1991.

TA–W–26,307; Shell Oil Co., Development, Houston, TX

A certification was issued covering all workers separated on or after September 15, 1991.

TA–W–26,310; Shell Oil Co., Shell Western E & P, Inc., Houston, TX and Operating at Various Locations in the Following States

TA–W–26,310A AK
TA–W–26,310B CA
TA–W–26,310C CO
TA–W–26,310D LA
TA–W–26,310E MI
TA–W–26,310F MT
TA–W–26,310G OK
TA–W–26,310H TX (Except Houston)

A certification was issued covering all workers separated on or after September 15, 1991.

I hereby certify that the aforementioned determinations were issued during the month of December, 1991. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: December 18, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–30997 Filed 12–26–91, 8:45 am]

BILLING CODE 4510–30–M

[TA–W–26, 651]

Terry Colebrook, Colebrook, PA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 9, 1991 in response to a worker petition which was filed on behalf of workers at Terry Colebrook, Colebrook, Pennsylvania.

An active investigation covering the petitioning group of workers remains in effect (TA–W–26, 639). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 18th day of December 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91–30998 Filed 12–26–91; 8:45 am]

BILLING CODE 4510–30–7

Job Corps: Finding of No Significant Impact for the Relocation of the San Jose Job Corps Center in San Jose, California

Pursant to the Council on Environmental Quality regulations (40 CFR part 1500 to 1508) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Employment and Training Administration, Office of Job Corps, in accordance with 29 CFR 11.11(d), gives notice that an Environmental Assessment (EA) has been prepared and the proposed plans for the consolidation of the San Jose Job Corps Center in San Jose, California, will have no significant environmental impact.

The present San Jose Job Corps Center operations are split between two separate locations within the City of San Jose. The main campus located in downtown San Jose provides medical/dental, dormitory, food service, administrative, and some educational/recreational facilities. The Conniff site, located in surburban San Jose, provides administrative and educational services.

The purpose of the proposed action is to consolidate San Jose Job Corps Center operations at one location, and involves relocating the main campus activities to the Conniff site. This will allow the San Jose Job Corps Center program to provide, in a better manner, needed training to 305 residential and 135 non-residential students, with improved efficiency. The proposed action will also mitigate critical space limitations of the present center and eliminate Life Safety Code violations imposed by present conditions.

Consolidating operations at the Conniff site will necessitate the construction of six new buildings and the rehabilitation of five existing buildings. The consolidated center will provide dormitories; recreational, medical/dental, and administrative services; educational and vocational training; and storage space, consistent with Job Corps guidelines and center needs.

The alternatives considered in the preparation of the EA were (1) the "No Build" alternative and (2) to continue as proposed. Choosing the "No Build" alternative would require the continued operation of the San Jose Job Corps Center under the present inefficient conditions. This would also mean the continuation of present space limitations. The improvements in facilities and operational efficiency afforded by the proposed action indicate that the consolidation of all San Jose Job Corps Center activities to the Conniff site is the preferred alternative.

Construction activities associated with the proposed action could potentially increase noise levels at the Conniff site and within the site neighborhood; however, construction activities will be limited to the hours of 7 a.m. to 3:30 p.m. The use of sound control devices and muffled exhausts on all noise-generating construction equipment will be required. The use of appropriate techniques to minimize construction dust emissions will mitigate construction-related air pollution concerns. Construction activities will also be managed (e.g., through the use of construction fences, etc.) so that trees to be preserved on the site are adequately protected. Even though there are no known historical or archaeological resources at the Conniff site, a Phase 1 archaeological study will be performed by a certified State archaeologist. Further research will be performed if artifacts are found to be on site.

Noise from roof-mounted air conditioning units and exhaust fans may pose a potential adverse impact within the Conniff site and for some nearby residents. Job Corps, however, will undertake a thorough evaluation of this potential impact, and implement the corrective actions necessary.

Although the proposed project will cause an increase in traffic in the community near the Conniff site because of traffic flow direction and timing, the increase in traffic volume is not expected to adversely affect traffic flow on neighborhood streets. Bus traffic to and from the Conniff site is not expected to increase above existing levels.

The infrastructure necessary to support the proposed action will not be adversely affected. Utilities are of adequate supply, water and sewer are of sufficient capacity, and no net increases in solid waste are anticipated. The proposed project will be constructed in accordance with local fire requirements. An on-site security program is part of normal Job Corps center operations. The proposed project will not have a net adverse impact on either police, fire, or emergency services of either the City of San Jose or Santa Clara County.

Currently, the present lighting at the Conniff site is not consistent with San Jose City requirements. This proposed project will bring the exterior lighting conditions into compliance with City ordinances.

The bright-colored architectural scheme proposed for the project buildings will be reviewed by Job Corps,

who will also consider input from representatives of the neighborhood.

Based upon the information gathered during the preparation of the EA, the Department of Labor, Employment and Training Administration, Office of Job Corps, finds that the consolidation of the San Jose Job Corps Center to the Conniff site in San Jose, California, will not cause any significant impact on the environment. Copies of the Environmental Assessment and additional information are available to interested parties by contacting Mr. James Mathews, Director, Region IX, Office of Job Corps, at (415) 744–6658 (this is not a toll free number).

Dated at Washington, DC, this 20th day of December, 1991.

Peter E. Rell,

Director of Job Corps.

[FR Doc. 91–30999 Filed 12–26–91; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL CREDIT UNION ADMINISTRATION

Public Information Collection Requirement Submitted to OMB for Review

Date: December 18, 1991.

The National Credit Union Administration has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submissions may be obtained by calling the NCUA Clearance Officer listed. Comments regarding information collections should be addressed to the OMB reviewer listed and to the NCUA Clearance Officer, NCUA, Administrative Office, Room 7344, 1776 G Street, Washington, DC 20456.

National Credit Union Administration

OMB Number: 3133–0076.

Form Number: NCUA 8040.

Type of Review: Extension of the expiration date of a currently approved collection.

Title: Voluntary Liquidation Procedures for Insured Federal Credit Unions.

Description: NCUA 8040—Voluntary Liquidation Procedures for Insured Federal Credit Unions. The booklet provides suggested forms and outlines procedures for voluntary liquidation of a federal credit union by officials.

Respondents: Federally-insured credit unions.

Estimated Number of Respondents: 25.

Estimated Burden Hours per Response: 20 hours.

Frequency of Response: One Occasion.

Estimated Total Reporting Burden: 500 hours.

Clearance Officer: Wilmer A. Theard, (202) 682–9700, National Credit Union Administration, Room 7344, 1776 G Street, NW., Washington, DC 20456.

OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Becky Baker,

Secretary of the NCUA Board.

[FR Doc. 91–30931 Filed 12–26–91; 8:45 am]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings was published November 25, 1991 (56 FR 59304). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS full Committee and ACNW meetings designated by an asterisk (*) will be closed in whole or in part to the public. ACRS full Committee and ACNW meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS full Committee and ACNW meetings, and when ACRS Subcommittee and ACNW Working Group meetings will start will be published prior to each meeting. Information was to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the January 1992 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committees (telephone: 301/492–4600 (recording) or 301/492–7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., Eastern Time.

ACRS Subcommittee Meetings

Joint Safety Philosophy, Technology and Criteria/Severe Accidents/ Regulatory Policies and Practices, January 7–8, 1992, Bethesda, MD. The Subcommittees will discuss a number of interrelated proposed staff position papers as follows: (1) Proposed Revisions at 10 CFR part 50 and part 100, Decoupling Siting from Design, (2) Site Characteristics to be Used in Part 100 Revision and Large Release Determination, (3) Proposed Definition of a Large Release for Safety Goals Implementation (tentative) and (4) Proposed Revision ot TID–14844 to Update Source Term.

Planning and Procedures, January 8, 1992, Bethesda, MD. The Subcommittee will discuss items proposed for consideration by the full Committee and other issues as appropriate.

Safety Research, January 14, 1992, Bethesda, MD. The Subcommittee will hold a roundtable discussion on the scope, nature and approach of a proposed Committee report on the research program of NRC's Office of Nuclear Regulatory Research.

Improved Light Water Reactors, January 22, 1992, Bethesda, MD. The Subcommittee will review SECY–91–300, Draft Safety Evaluation Report for Chapter 10 of the EPRI's Requirements Document for Evolutinary Designs.

Advanced Boiling Water Reactors, January 23–24, 1992, Bethesda, MD. The Subcommittee will review SECY–91–294 and SECY–91–309, addressing two Draft Safety Evaluatuion Reports (DSERs) related to different chapters of the GE/ Standard Safety Analysis Report (SSAR) for the ABWR design, and other related issues.

Reliability Assurance, Week of January 27, 1992, Bethesda, MD– CANCELLED.

Extreme External Phenomena, February 5, 1992, Bethesda, MD. The Subcommittee will continue the discussion of the proposed revisions to 10 CFR Part 100, Appendix A, "Seismic and Geologic Siting Criteria for Nuclear Power Plants," considered during the Subcommittee meeting on December 10, 1991.

Auxiliary and Secondary Systems, February 13–14, 1992 (tentative), Bethesda, MD. The Subcommittee will discuss the proposed resolution of Generic Issue 106, "Piping and Use of Highly Combustible Gases in Vital Areas," Generic Issue–57, "Effects of Fire Protection System Actuation on

Safety-Related Equipment," and other fire-related matters.

Mechanical Components, February 19, 1992, Bethesda, MD. The Subcommittee will review the status of the motor-operated valve (MOV) and the check valve operability programs and other related matters.

Advanced Boiling Water Reactors, February 20–21, 1992, Bethesda, MD. The Subcommittee will review SECY–91–320 and SECY–91–355, addressing two DSERs related to different chapters of the GE/SSAR for the ABWR design, and other related issues.

Structural Engineering, Week of February 24, 1992 (tentative), Bethesda, MD. The Subcommittee will discuss with the NRC staff and the industry the status of Containment Structural Integrity programs, including foreign programs.

Joint Materials and Metallurgy/Maintenance Practices and Procedures, April 1, 1992, Bethesda, MD. The Subcommittees will discuss Risk-Based Inspection Guidelines.

Advanced Reactor Designs, Date and location to be determined (January). The Subcommittee will visit the ORNL facility and will discuss the testing program and experiments for the MHTGR design.

Joint Plant Operations/Probabilistic Risk Assessment, Date to be determined (January/February), Bethesda, MD. The Subcommittees will continue the review of the NRC staff's program to address the issue of risk from low power/shutdown operations of nuclear power plants.

Joint Individual Plant Examinations/Severe Accidents, Date to be determined (February/March), Bethesda, MD. The Subcommittees will discuss the status of the IPE program and the development of Severe Accident Management Guidelines.

Advanced Pressurized Water Reactors, Date to be determined (March, tentative), Bethesda, MD. The Subcommittee will continue its review of the ABB CE System 80+ CESSAR for Design Certification. Subject material being proposed for discussion includes Engineered Safety Features systems and USIs/GSIs.

Thermal Hydraulic Phenomena, Date to be determined (March/April), Bethesda, MD. The Subcommittee will continue its review of the NRC staff program to address the issue of interfacing systems LOCAs.

Joint Thermal Hydraulic Phenomena/Core Performance, Date to be determined (March/April, tentative) Bethesda, MD. The Subcommittees will continue the review of the issues pertaining to BWR core power stability.

Regional Programs, Date to be determined, NRC Region V Office, Walnut Creek, CA. The Subcommittee will discuss the activities of the NRC Region V Office.

Thermal Hydraulic Phenomena, Date to be determined, Bethesda, MD. The Subcommittee will review the status of the application of the Code Scaling, Applicability, and Uncertainty (CSAU) Evaluatuion Methodology to a small-break LOCA calculation for a B&W plant.

ACRS Full Committee Meetings

381st ACRS Meeting, January 9–11, 1992, Bethesda, MD. Items are tentatively scheduled.

A. *Nuclear Power Plant Siting*—Review and comment on proposed revision to 10 CFR part 100, Reactor Site Criteria to Decouple Nuclear Power Plant Siting from Facility Design. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

B. *TID–14844, Calculation of Distance Factors for Power and Test Reactor Sites, Proposed Revision*—Review and comment on proposed revision of TID–14844 to update the source term used as the basis to establish siting distances. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

C. *Proposed Site Characteristics to be Used in Part 100 Revisions and in the Definition of a Large Release*—Review and comment on proposed site characteristics to be used in nuclear power plant siting and the definition of a large release. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

D. *Definition of a "Large Release" (tentative)*—Review and report on the proposed definition of a "large release" to be used in connection with the NRC safety goal policy. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

E. *Safety Features of Advanced Reactors*—Briefing and discussion regarding the safety features of advanced reactors and their impact on public acceptance of nuclear power. An invited expert will brief the Committee.

F. *Computerized Safety and Control Systems in Nuclear Power Plants*—Briefing and discussion of national and international activities related to the use of integrated computerized control and safety systems in nuclear power plants. A representative of the NRC staff will brief the Committee.

G. *Nuclear Power Plant Integrated Schedules*—Review and report on proposed NRC policy statement regarding integrated schedules for nuclear power plant modifications, maintenance, etc. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

*H. *Westinghouse AP 600 Plant, Integral Testing*—Review and comment on integral testing needs for certification of the Westinghouse AP 600 passive plant design. Representatives of the NRC staff and the Westinghouse Electric Corporation will participate, as appropriate. Portions of this session will be closed to discuss proprietary information applicable to this matter.

I. *Design Acceptance Criteria*—Review and comment on proposed design acceptance criteria (DAC) for certification of standardized nuclear power plant designs. Representatives of the NRC staff and the nuclear industry will participate, as appropriate.

J. *Control of Nuclear Power Plant Switchyard Activities*—Discuss proposed ACRS comments and recommendations regarding control of nuclear power plant switchyards during plant transients and incidents.

K. *ACRS Subcommittee Activities*—Briefings and discussions regarding the status of assigned subcommittee activities including items proposed for consideration by the full Committee (Planning and Procedures Subcommittee meeting on 01/08/92).

L. *NRC Metrication Policy*—Discuss and comment as appropriate on the proposed NRC policy to implement use of the metric system of measurement in its regulatory activities. Representatives of the NRC staff will participate, as appropriate.

M. *Reconciliation of ACRS Recommendation*—Discuss replies and comments from the NRC Executive Director for Operations regarding ACRS comments and recommendations provided to the NRC.

N. *Anticipated ACRS Activities*—Discuss various policies and practices that will impact on the activities of the Committee including proposed action plans for the resolution of Key Technical Issues related to evolutionary, passive, and advanced reactor designs that are in need of early resolution and the impact of proposed amendments to the Federal Advisory Committee Act.

O. *Report to the U.S. Congress on Reactor Safety Research*—Discussion and preparation of the Committee's Annual Report to the U.S. Congress on the NRC Safety Research Program.

P. *Miscellaneous*—Discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

382nd ACRS Meeting, February 6–8, 1992, Bethesda, MD—Agenda to be announced.

383rd ACRS Meeting, March 5–7, 1992, Bethesda, MD—Agenda to be announced.

ACNW Full Committee and Working Group Meetings

ACNW Working Group on the Licensing Requirements for Land Disposal of Radioactive Waste 10 CFR part 61, January 15, 1992, Bethesda, MD—CANCELLED.

39th ACNW Meeting, January 16–17, 1992, Bethesda, MD. Items are tentatively scheduled.

A. Continue deliberations to investigate the feasibility of a systems analysis approach to reviewing the overall high-level waste program, including the short and mid-range technical milestones for handling high-level waste with the goal of reporting back to the Commission the ACNW's recommendations as to the scope of such a review and the advisability of the ACNW undertaking it.

B. Review and comment on a revision to NUREG–1200, Standard Review Plan for a Low-Level Waste Facility.

C. Discuss a paper to be given at the January 29–31, 1992, Low-Level Waste Forum Winter Meeting.

D. Discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

40th ACNW Meeting, February 20–21, 1992, Bethesda, MD—Agenda to be announced.

41st ACNW Meeting, March 12–13, 1992, Bethesda, MD—Agenda to be announced.

ACNW Working Group on Inadvertent Human Intrusion Related to the Presence of Natural Resources at a High-Level Waste Site, Date to be determined, Bethesda, MD. The Working Group will discuss methdologies for the assessment of the potential for natural resources at the proposed high-level waste repository site at Yucca Mountain. The relationship between such resources and the potential for human intrusion will be emphasized.

ACNW Working Group on Residual Contamination Clean-up Criteria, Date to be determined, Bethesda, MD. The Working Group will discuss the clean-up criteria levels for unrestricted use of contaminated sites that are or have been under NRC/AEC license.

Dated December 20, 1991.

John C. Hoyle,

Advisory Committee Mangement Officer.

[FR Doc. 91–30950 Filed 12–26–91; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–29626–OM, Re: License Suspension ASLBP No. 92–653–02–OM]

Piping Specialists, Inc., (Byproduct Material License No. 24–24826–01 EA 91–136); Consolidated Discovery and Hearing

December 19, 1991.

A public hearing will be held both for the purpose of discovery and for the compilation of an evidentiary record on January 14 to 17, 1992, at the U.S. Federal Courthouse, Courtroom 829, 811 Grand Ave., Kansas City, MO 64106. The first session will start at 10 am; subsequent times will be announced.

Bethesda, Maryland.

For the Atomic Safety and Licensing Board.

Peter B. Bloch,

Chair.

[FR Doc. 91–30949 Filed 12–26–91; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–30095; File No. SR-Amex-91–27]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Filing of Amendment to Proposed Rule Change Relating to Options on the S&P MidCap 400 Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 13, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the amendment to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change form interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is hereby amending its proposed rule filing SR-Amex-91–27 which provides for the listing and trading of options on the S&P MidCap 400 Index ("MidCap" or "Index") developed by the Standard and Poor's Corporation ("S&P"). This amendment provides for a modification of certain MidCap option contract specifications in connection with (i) the expiration cycle; (ii) strike price intervals; (iii) the Index settlement value; and (iv) the ability to utilize the Amex's AUTO-EX system for orders up to 100 contracts.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In SR-Amex-91–27, the Exchange proposed the listing and trading of options on the Index. The Exchange now proposes to amend the filing to modify certain MidCap option contract specifications with respect to the expiration cycle, strike price intervals, the Index's settlement value, and the Exchange's AUTO-EX capability for MidCap options.

1. Expiration Months

In accordance with Exchange Rule 903C, the Amex seeks to list put and call options on the MidCap having up to four consecutive near-term expiration months plus five additional further-term expiration months in the March cycle (instead of five additional months with alternating June and December expirations). For example, consecutive expirations of January, February, March and April plus the following June, September, December, March and June expirations would be listed. This change will facilitate hedging opportunities between options on the MidCap traded on the Amex and futures and futures options contracts which are the subject of a proposed rule filing to the Commodities Futures Trading Commission by the Chicago Mercantile Exchange ("CME")

2. Strike Price Intervals

The Exchange seeks to modify its strike price policy to obtain the flexibility to introduce 2½-point strike

price intervals for certain near-the-money series in near-term expiration months for MidCap options.

It should be noted that the current index value of the MidCap is approximately 130, a level that will be the lowest of any broad market index which serves as the basis of listed index options trading. In this regard, the New York Stock Exchange currently lists 2½ point strikes for its New York Composite Index which has an index value in excess of 200. Further, the ability to add 2½ point intervals will provide closer uniformity with the CME's proposal which calls for 2½ point strike intervals for certain near-term futures options. Accordingly, the Exchange believes that the availability of narrower strike price intervals will enable customers to more finely tailor their options positions to achieve intended investment objectives.

3. Settlement Value

The Exchange now proposes that the Index value for purposes of settling MidCap options ("Settlement Value") will be calculated on the basis of opening market prices on the business day ("Settlement Day") prior to the expiration date of such options. Settlement Day is normally the Friday preceding "Expiration Saturday". For exchange-listed stocks, the "opening value" will be based on the primary market while securities trading through NASDAQ will be based on the first reported trade of the day. In the event a component security in the Index does not trade on Settlement Day, the closing price from the prior trading day will be used to calculate the Settlement Value. In view of the above change, trading in expiring MidCap options will cease at the close two business days preceding expiration Saturday (normally the Thursday preceding Expiration Saturday).

4. Auto-Ex

In anticipation of substantial customer (off-floor) activity in MidCap options (including institutional activity), the Exchange seeks to have the ability to utilize its Auto-Ex system for orders of up to 100 contracts. The ability to use Auto-Ex for certain near-term series will afford customers deep and liquid markets along with expeditious executions.

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-Amex-91-27 and should be submitted by January 17, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-30877 Filed 12-26-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30104; File No. SR-DTC-91-23]

Self-Regulatory Organizations; The Depository Trust Company; Notice of a Proposed Rule Change Relating to the Elimination of Certain Urgent Withdrawals of Corporate Issues Settling in Sameday Funds

December 19, 1991.

Pursuant to section 19(b) of the Securities Exchange Act of 1934, ("Act"), 15 U.S.C. 78s(b), notice is hereby given that on November 29, 1991, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-DTC-91-23) as described in Items I, II and III below, which Items have been prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of the elimination of most urgent withdrawals ("CODs")[1] for corporate securities eligible in DTC's Same-Day Funds Settlement ("SDFS") system and the implementation of DTC's Rush Withdrawal-by-Transfer ("RWT") service for these issues and the elimination of same-day CODs in SDFS—eligible municipal issues (next-day CODs will continue to be available for municipal issues).[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in

[1] "COD" is an acronym for Certificate on Demand.

[2] See DTC's Important Notice B-9591-91 dated November 4, 1991, in Exhibit 2 to the filing.

sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Certificates can be withdrawn from DTC in three ways:

(1) Withdrawals-by-Transfer ("WTs"), in which certificates are transferred routinely to the name of a participant's customer or another party. Depending on the issue, its transfer agent and the agent's location, newly registered certificates are generally available one to two weeks after DTC has received WT instructions.

(2) Rush Withdrawals-by-Transfer ("RWTs"), in which DTC expedites the transfer of certificates to the name of a participant's customer or another party. Depending on the issue, its transfer agent, its registrar and the agent's and registrar's locations, newly registered certificates for United States issues are generally available one to three days after DTC has received RWT instructions (six days for Canadian issues).

(3) Urgent COD withdrawals, in which certificates registered in the name of DTC's nominee, Cede & Co., or bearer certificates are released directly from the depository.

Since the volume of CODs in SDFS-eligible issues has dwindled to a nominal level, currently averaging 20 or fewer instructions per day, DTC believes that in general its participants no longer rely on urgent withdrawals to obtain corporate SDFS certificates.[3] Discontinuance of the subject service will enable DTC to complete the elimination of storage for large numbers of corporate certificates in an assortment of round-lot quantities to match participants' most likely requirements for CODs, if CODs were needed, thereby reducing both risk of loss and vault costs for storage, security and personnel. It is expected that in most cases participants will be able to anticipate their withdrawal needs sufficiently in advance to rely on ordinary WTs for their certificates, and in some cases on RWTs. For the rare cases when a certificate must be obtained by a specific date, participants are directed to telephone DTC's Vault Expediting Department for assistance in meeting their deadline. During more than two years experience with DTC's NDFS corporate COD elimination pilot (see SR–DTC–89–01 amd SR–DTC–90–13), DTC is not aware that any participant, or any customer of a participant, has suffered a financial loss from a failure to receive a timely withdrawal when needed.

The proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder because it will reduce unnecessary costs in the safeguarding and other processing of securities certificates in the national clearance and settlement system. It will reduce vault and other physical security costs and concerns by substituting "jumbo" certificates for smaller denominations. It will eliminate a costly urgent withdrawal structure and staffing that is no longer needed on a routine basis and should reduce risks associated with that structure. It will cease to mutualize a cost that is better addressed and priced as exception processing.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited or received. DTC first announced the proposed rule change to participants on November 4, 1991, (see Exhibit 2 to the filing) and has received no objections from participants or others.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room at the address above.

Copies of the filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–91–23 and should be submitted by January 20, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–30962 Filed 12–26–91; 8:45 am]

BILLING CODE 8010–01–M

[3] Many of the SDFS issue types are now predominantly—if not exclusively—book-entry-only ("BEO") issues. BEO securities are certificated securities that are evidenced by one balance certificate registered in the name of DTC's nominee, Cede & Co. Beneficial owners generally cannot obtain negotiable certificates evidencing their ownership interests in BEO issues. This eliminates any type of certificate withdrawal for these issues, whether WT, RWT or COD. Of the issue types currently eligible in the SDFS system, medium-term notes ("MTN"), commercial paper, and auction-rate preferreds are solely BEO, municipal notes are almost entirely BEO, and many of the asset-backed securities ("ABS") and municipal variable-rate demand option ("VRDO") issues are BEO. This has significantly contributed to the sharp drop in SDFS withdrawals. For fully certificated issues, few withdrawals are needed because rules of the New York Stock Exchange, the National Association of Securities Dealers and other self-regulatory organizations now require, in general, that all deliveries of securities made against full payment in depository-eligible securities be settled by book-entry.

SMALL BUSINESS ADMINISTRATION

[Determination of Disaster Loan Area #2543]

Territory of American Samoa; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on December 13, 1991, I find that the Territory of American Samoa constitutes a disaster

area as a result of damages caused by Hurricane Val which occurred December 6 through and including December 10, 1991. Applications for loans for physical damage may be filed until the close of business on February 13, 1992, and for loans for economic injury until the close of business on September 14, 1992, at the address listed below:

Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853–4795.

or other locally announced locations.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 254308 and for economic injury the number is 750200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: December 20, 1991.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91–30943 Filed 12–26–91; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2544]

Hawaii; Declaration of Disaster Loan Area

Kauai County in the State of Hawaii constitutes a disaster area as a result of damages caused by heavy rains and severe flooding which occurred on December 13–14, 1991. Applications for loans for physical damage may be filed until the close of business on February 20, 1992 and for loans for economic injury until the close of business on September 21, 1992 at the address listed below:

Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853–4795

or other locally announced locations.

The interest rates are:

For physical damage:	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 254406 and for economic injury the number is 750300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: December 20, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91–30942 Filed 12–26–91; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2542]

Federated States of Micronesia; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on December 10, 1991, I find that the Island of Pohnpei (Ponape), Mwoakilloa Atoll, and Pinegelap Atoll is in the Federal States of Micronesia constitute a disaster area as a result of damages caused by Typhoon Yuri which occurred November 25–29, 1991. Application for loans for physical damage may be filed until the close of business on February 10, 1992, and for loans for economic injury until the close of business on September 10, 1992, at the address listed below:

Disaster Area 4 Office, Small Business Administration, P.O. Box 13795, Sacramento, CA 95853–4795

or other locally announced locations.

The interest rates are:

For physical damage:	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number is assigned to this disaster for physical damage is 254206 and for economic injury the number is 749400.

(Catalog of Federal Domestic Assistance Nos. 59002 and 59008).

Dated: December 13, 1991.

A. Wesley Moore,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91–30946 Filed 12–26–91; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2541]

Republic of the Marshall Islands; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on December 7, 1991, I find that Ebeye Island, Kwajalein Atoll, Lae Atoll, and Ujae Atoll in the Republic of the Marshall Islands constitute a disaster area as a result of damages caused by Typhoon Zelda which occurred November 28–29, 1991. Applications for loans for physical damage may be filed until the close of business on February 6, 1992, and for loans for economic injury until the close of business on September 8, 1992, at the address listed below:

Disaster Area 4 Office, Small Business Administration, P.O Box 13795, Sacramento, CA 95853–4795,

or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000%
Homeowners without credit available elsewhere	4.000%
Business with credit available elsewhere	8.000%
Business and non-profit organizations without credit available elsewhere	4.000%
Others (including non-profit organizations) with credit available elsewhere	8.500%

	Percent
For Economic Injury:	
Business and small agricultural cooperatives without credit available elsewhere	4.000%

The number assigned to this disaster for physical damage is 254106 and for economic injury the number is 749300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: December 13, 1991.

A. Wesley Moore,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 91-30947 Filed 12-26-91; 8:45 am]

BILLING CODE 8025-01-M

Investment Advisory Council; Notice of Meeting

Time and Date: 8:30 a.m.-5 p.m. Wednesday, January 8, 1992.

Place: The meeting will be held in Administrator's Conference Room on the seventh floor of SBA headquarters at 409 Third Street, SW., Washington, DC.

Purpose: The meeting is being held to discuss such matters concerning the Small Business Investment Company (SBIC) and Specialized Small Business Investment Company (SSBIC) programs as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, contact John Simonds, room 8500, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, telephone (202) 205-7596.

Dated: December 19, 1991.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 91-30944 Filed 12-26-91; 8:45 am]

BILLING CODE 8025-01-M

Small Business Investment Company; Maximum Annual Cost of Money to Small Business Concerns

13 CFR 107.302 (a) and (b) limit maximum annual Cost of Money (as defined in 13 CFR 107.3) that may be imposed upon a Small Concern in connection with Financing by means of Loans or through the purchase of Debt Securities. The cited regulation incorporates the term "Debenture Rate", which is defined elsewhere in 13 CFR 107.3 in terms that require SBA to publish, from time to time, the rate charged on ten-year debentures sold by Licensees to the public. Notice of this rate will be published upon change in the Debenture Rate.

Accordingly, Licensees are hereby notified that effective the date of publication of this Notice, and until further notice, the Debenture Rate to be used for computation of maximum cost of money pursuant to 13 CFR 107.302 (a) and (b) is 7.69 percent per annum.

13 CFR 107.302 does not superseded or preempt any applicable law imposing an interest ceiling lower than the ceiling imposed by its own terms. Attention is directed to section 308(i) of the Small Business Investment Act, as further amended by section 1 of Public Law 99-226, December 28, 1985 (99 Stat. 1744), to that law's Federal override of State usury ceilings, and to its forfeiture and penalty provisions.

(Catalog of Federal Domestic Assistance Program No. 59.011, small business investment companies)

Dated: December 17, 1991.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 91-30945 Filed 12-26-91; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 99000061]

Sirrom Capital, L.P.; Application for a Small Business Investment Company License

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1991)) by Sirrom Capital, L.P., 511 Union Street, suite 900, Nashville, TN 37219, for a license to operate as a limited partnership small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended, (15 U.S.C. et seq.) and the Rules and Regulations promulgated thereunder.

The formation and licensing of a limited partnership SBIC is subject to the provisions of § 107.4 of the Regulations.

The initial investors and their percent of ownership of the Applicant are as follows:

Name	Percentage of ownership
General Partner:	
Sirrom Capital Corporation, 511 Union Street, Nashville, Tennessee 37219	2.8
Limited Partners:	
John A. Morris, Jr., M.D., 870 Tyne Blvd., Nashville, Tennessee 37220	44.2
Alfred H. Morris, 23 E. 94th Street, Suite 2A, New York, New York 10128	44.2
3 Limited Partners each owning less than 10 percent	8.8

Sirrom Capital, L.P. will be managed by Sirrom Capital Corporation. The offices and directors of Sirrom Capital Corporation are:

Name	Relationship to manager	Percentage ownership of manager
John A. Morris, Jr., M.D., 870 Tyne Blvd., Nashville, Tennessee 37220	President and Director	50.0
George M. Miller, II, 511 Union Street, Nashville, Tennessee 37219	Vice President, Secretary and Director	0.0
Alfred H. Morris, 23 E. 94th Street, Suite 2A, New York, New York 10128	Director	50.0
Raymond H. Pirtle, Equitable Securities Corp., 511 Union Street, 8th Fl., Nashville, Tennessee 37219, General Partner.	Director	0.0
Edwin W. Bass, 2700 First American Ctr., Nashville, Tennessee 37238	Director	0.0

The Applicant, a limited partnership organized under the provisions of the State of Tennessee Revised Uniform Limited Partnership Act, section 61-2-201, and duly qualified to do business in the State of Tennessee, will begin operations with a capitalization of $3,538,400. The applicant will conduct its activities primarily in the State of Tennessee and will be a source of equity capital and long term funds for qualified small business concerns.

Matters involved in SBA's consideration of the Application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the existing company under their management including profitability and financial soundness in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

A copy of the Notice shall be published in a newspaper of general circulation in the Nashville, Tennessee area.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 17, 1991.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 91-30943 Filed 12-26-91; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Chase Federal Savings and Loan Assoc. Philadelphia, PA; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Chase Federal Savings and Loan Association, Philadelphia, Pennsylvania, on November 22, 1991.

By the Office of Thrift Supervision.

Dated: December 20, 1991.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30902 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

Cobb Federal Savings Assoc.; Notice of Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Cobb Federal Savings Association, Marietta, Georgia, on November 8, 1991.

Dated: December 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30891 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

Delta Savings Bank Westminster, California; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Delta Savings Bank, Westminster, California, OTS No. 7897, on November 8, 1991.

Dated: December 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30893 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

Guardian Federal Savings Assoc.; Notice of Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Guardian Federal Savings Association, Huntington Beach, California on December 5, 1991.

Dated: December 20, 1991.

By the Office of Thrift Supervision

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30903 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

Peoples Federal Savings Assoc.; Notice of Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Peoples Federal Savings Association, Ottumwa, Iowa, on November 20, 1991.

Dated: December 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30896 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

Western Federal Savings and Loan Association Glenview, IL; Notice of Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2) (B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Western Federal Savings and Loan Association, Glenview, Illinois, on November 21, 1991.

Dated: December 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30900 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

White Horse Federal Savings and Loan Assoc., Trenton, NJ; Notice of Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in Section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for White Horse Federal Savings and Loan Association, Trenton, New Jersey, on November 21, 1991.

Dated: December 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30898 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

Atlantic Financial Savings, FA; Notice of Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of Section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Atlantic Financial Savings, FA, Bala Cynwyd, Pennsylvania ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on November 15, 1991.

Dated: December 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30894 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

Chase Savings and Loan Assoc., Philadelphia, PA; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2)(C) of the Home Owner's Loan

Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Chase Savings and Loan Association, Philadelphia, Pennsylvania OTS No. 5164 on November 22, 1991.

Dated: December 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30901 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

Cobb Federal Savings Bank; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Cobb Federal Savings Bank, Marietta, Georgia, OTS No. 8414 on November 8, 1991.

Dated: December 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30892 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

[Order No. DM 91-14]

First Federal Savings & Loan Association of Fargo, F.A., Fargo, ND; Notice of Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of Section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Federal Savings & Loan Association of Fargo, F.A., Fargo, North Dakota ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on November 1, 1991.

Dated: December 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30890 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

Guardian Savings and Loan Assoc.; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Guardian Savings and Loan Association, Huntington Beach, California, OTS Docket No. 7961, on December 5, 1991.

Dated: December 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30904 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

Peoples Federal Savings Bank; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2)(A) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Peoples Federal Savings Bank, Ottumwa, Iowa, OTS No. 1319, on November 20, 1991.

Dated: December 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30895 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

Western Savings and Loan Assoc., Glenview, IL; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in § 5 (d)(2)(C) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Western Savings and Loan Association, Glenview, Illinois, OTS No. 1614, on November 21, 1991.

Dated: December 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30899 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

White Horse Savings and Loan Assoc., Trenton, NJ; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in Section 5(d)(2)(C) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for White Horse Savings and Loan Association, Trenton, New Jersey, OTS No. 5711, on November 21, 1991.

Dated: December 20, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-30897 Filed 12-26-91; 8:45 am]

BILLING CODE 6720-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-82]

Termination of Section 302 Investigation Regarding Thailand's Enforcement of Copyright Protection

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of termination of investigation initiated under section 302 of the Trade Act of 1974, as amended, 19 U.S.C. 2414 and monitoring under section 306 (19 U.S.C. 2416.)

SUMMARY: Pursuant to section 304(a)(1)(A)(ii) of the Trade Act of 1974 (Trade Act), as amended, 19 U.S.C. 2414a(1)(A)(ii), the United States Trade Representative (USTR) has determined that acts, policies, and practices of the Government of Thailand concerning the enforcement of copyrights in that country are unreasonable and burden or restrict U.S. commerce. The Thai government, however, is taking steps to improve enforcement procedures and combat copyright piracy. The Thai government has also begun the process of amending its copyright law. The ultimate results of these efforts will not be known immediately. Thus, pursuant to section 301(b) (19 U.S.C. 2411(b)), USTR has determined that the appropriate action in this case is to terminate the investigation and to monitor Thai government implementation of measures to eliminate those acts, policies, and practices.

DATES: This investigation was terminated on December 20, 1991.

FOR FURTHER INFORMATION CONTACT: Peter Collins, Director for Southeast Asian Affairs, (202) 395-6813, or Catherine Field, Associate General Counsel, (202) 395-3432, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: On November 15, 1990, the International Intellectual Property Alliance (IIPA), the Recording Industry Association of America (RIAA), and the Motion Picture Export Association of America (MPEAA) field a petition under section 302(a) of the Trade Act, alleging that Thailand does not provide adequate and

effective protection for U.S. copyrighted works.

Specific practices complained of included: (1) Difficulties in obtaining police searches for infringing product; (2) overly burdensome and unreasonable requests for documents to establish copyright ownership and authority to file complaints; (3) burdensome requirements regarding personal appearances by copyright owner's corporate personnel to present duplicative evidence; (4) lack of consistency in requirements to obtain prosecution of cases; and (5) inadequate sanctions for copyright piracy that do not deter further infringements.

On December 21, 1990, the USTR initiated an investigation of the Thai government's acts, policies, and practices relating to the enforcement of copyrights. By **Federal Register** notice dated January 3, 1991 (56 FR 292), USTR invited written public comments on the Thai government's acts, policies, and practices relating to the enforcement of copyrights, and on whether these acts, policies, and practices constituted a burden or restriction on U.S. commerce. On November 19, 1991, the USTR invited further public comment on these issues (56 FR 58416).

During the course of this investigation the U.S. and Thai governments held a series of consultations on the matters under investigation. The Thai government has increased efforts to enforce copyright through raids on pirates and seizure of evidence necessary to prosecute these persons. Prosecutions in many of the cases resulting from the raids conducted after the initiating of this investigation have not yet been initiated and none have been completed.

Thailand has provided commitments to the United States to: Effectively and expeditiously prosecute alleged copyright infringers and seek imposition of penalties sufficient to deter current and future infringers; simplify and regularize the process of raids, including reducing the documentation that copyright owners must submit for each new raid requested; and amend the current copyright law to strengthen its substantive provisions and improve its enforcement provisions. Implementation of these commitments, however, will be in the future.

Thus, USTR has determined, after consultation with the petitioners, that the appropriate action in this case is to terminate the investigation and monitor Thailand's implementation of these commitments to ensure that adequate and effective protection for U.S. copyrighted works is achieved.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 91-30876 Filed 12-26-91; 8:45 am]

BILLING CODE 3190-01-M

Federal Register

Friday
December 27, 1991

Part II

Federal Election Commission

11 CFR Parts 100 and 104

Loans From Lending Institutions to Candidates and Political Committees; Transmittal to Congress; Final Rule

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 104

[Notice 1991-24]

Loans From Lending Institutions to Candidates and Political Committees

AGENCY: Federal Election Commission.

ACTION: Final rule; transmittal of regulations to Congress.

SUMMARY: The Commission has revised its regulations at 11 CFR 100.7(b)(11), 100.8(b)(12), and 104.3(d), concerning loans from lending institutions of candidates and political committees. These regulations implement 2 U.S.C. 431(8)(B)(vii), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act" or "FECA"), 2 U.S.C. 431 et seq. In particular, they provide guidance on when a loan is "made on a basis which assures repayment," as required at 2 U.S.C. 431(8)(B)(vii)(II). They also clarify that lines of credit are subject to the same requirements as other bank loans; emphasize restructuring, rather than settlement, of bank loans; and specify new information that is to be reported to the Commission concerning bank loans. Further information is provided in the supplementary information which follows.

DATES: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d).

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219-3690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations at 11 CFR parts 100 and 104. These regulations concern loans from lending institutions to candidates and political committees.

Under 2 U.S.C. 431(8)(B)(vii), a bank loan "made in accordance with applicable law and in the ordinary course of business" is not considered a contribution under the Federal Election Campaign Act ("FECA" or "the Act"), if certain conditions are met. One of these conditions is that the loan be "made on a basis which assures repayment." 2 U.S.C. 431(8)(B)(vii)(II).

On August 5, 1986, the Commission published a notice of proposed rulemaking on Public Financing, in connection with the 1988 presidential election cycle. 51 FR 28154. In that notice, the Commission raised its concerns about loans from lending institutions and sought comment on several alternative applications of this statutory phrase in the context of publicly funded campaigns, as well as loans made to congressional candidates and other political committees. The Commission received fifteen comments that responded to the loan aspect of this notice. In addition, the Commission's public financing regulations hearing of December 3, 1986, addressed some aspects of the bank loan question.

On January 22, 1987, the Commission published an announcement of a hearing and the extension of the comment period, in a notice that focused solely on the bank loan issue. 52 FR 2416. This notice analyzed the comments received to date; announced a hearing date; and sought further comment on the alternatives presented in the August 1986 notice, as well as on other alternatives. Although the Commission received two additional comments in response to the second notice, it did not receive any requests to testify and therefore canceled the public hearing.

Both the 1986 and the 1987 notices contained narrative proposals dealing with various aspects of the bank loan question, but did not contain specific regulatory language. On July 27, 1989, the Commission published a notice of proposed rulemaking which contained the text of a proposed regulation, and also included draft forms designed to obtain more information about the circumstances under which loans were made. 54 FR 31286. This notice's primary focus was on clarifying when loans are "made on a basis which assures repayment," but related topics were also presented. The Commission received eleven comments in response to this notice.

Throughout the course of this rulemaking, the Commission has had numerous, ongoing contacts with the banking regulatory agencies, in addition to receiving comments from banking trade associations and lending institutions themselves, regarding the drafting of these regulations. Each of these sources provided valuable information which serves as the basis for the revised rules published today.

Section 438(d) of title 2, United States Code, requires that any rules or regulations prescribed by the Commission to carry out the provisions of title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on December 20, 1991.

Explanation and Justification

The notice of proposed rulemaking requested comments on a number of suggestions on how to best implement the statutory requirement that bank loans be "made on a basis which assures repayment." In addition to responses on the specific questions raised by the notice, commenters raised the following general concerns.

Several noted that there is no definitive standard in the banking industry for the term, "assurance of repayment," and argued that the Commission should not attempt to draft one. However, the Act expressly requires that loans, to avoid being construed as campaign contributions, be "made on a basis which assures repayment." Even though there is no clear definition for the phrase in the banking industry, the Commission is responsible for implementing the statutory requirement that includes this phrase. The Commission's regulatory approach should not be limited by banking rules that were developed for other purposes.

Some comments also argued that "assurance of repayment" depends on each lending institution's case-by-case analysis of the circumstances of each loan, and suggested that all loans made "in the ordinary course of business" be found to comply with the "assurance of repayment" requirement. However, the statutory requirement that these loans be made "in the ordinary course of business" was enacted in 1971, while the phrase "made on a basis which assures repayment" was added in 1979. Under ordinary rules of statutory construction, it is presumed that Congress, by amending its original enactment, intended to make a substantive change in the law. Thus, as of the effective date of the 1979 amendment, the fact that a loan is made "in the ordinary course of business" is no longer in and of itself sufficient to guarantee that the loan does not constitute an illegal campaign contribution. In addition, it must meet the further qualifications, including the "assurance of repayment" requirement, now included at 2 U.S.C. 431(8)(B)(vii).

Commenters responding to the earlier notices noted that, while lending institutions cannot always predict when debtors' circumstances may change so as to make repayment of loan problematic, their ultimate focus is on whether the loan is repaid. In contrast, the concern of the FECA focuses not only on repayment but also on the initial making of the loan—whether, at the time

it was made, it was made on a basis which assured repayment.

Several banking associations expressed the view that only a lending institution, not the Commission, is qualified to determine what constitutes assurance of repayment. Some regulatory agencies similarly stated that lending institutions should not be made answerable to the Commission, but only to those entities specifically charged with overseeing banking activities. One questioned the appropriateness of the Commission's imposing affirmative compliance burdens on persons or entities other than candidates or political committees.

The Act, however, contemplates that lending institutions, when making loans to candidates and political committees, be subject to Commission oversight of the bank loan provisions, since failure to make a loan under conditions which assure repayment could result in a prohibited contribution. In fact, the Act imposes numerous obligations on persons and entities other than candidates and political committees in a number of other contexts. For these reasons, the Commission feels that the Act imposes on banks some portion of the requirement that bank loans be made on a basis which assures repayment.

The revised rules specify two sources of repayment that the Commission will consider to have met the "assurance of repayment" standard: Traditional collateral, with a perfected security interest in that collateral; and other sources of repayment, including anticipated future income (e.g., the anticipated receipt of public financing funds, fundraising, and interest income). Loans which do not meet these criteria will be considered on a case-by-case basis, based on the totality of their circumstances.

The notice solicited comments on how the rules should address lines of credit, given the concern that political candidates could draw on a line of credit after dissipating the collateral that originally supported it. The comments were unanimous in stating that lines of credit could be regulated in the same way as bank loans. The revised rules follow this approach: Lines of credit are considered bank loans, to be treated in the same manner as other loans from lending institutions.

The revised rules also follow Commission precedent by focusing on restructuring, rather than settlement, of bank loans. Each restructuring of a loan is considered a new loan for FECA purposes.

A number of other issues that were raised for comment in the notice of proposed rulemaking did not result in new regulations.

The notice sought comments on whether the Commission should analogize political loans to "insider loans," i.e., loans that a bank makes to its officers and board of directors. The intent of these insider loan provisions is to prevent favoritism in loans to "insiders," while the intent of an analogous Commission provision would be to guard against preferential treatment for political loans, and to subject political loans to a high level of scrutiny.

However, the fact that a lending institution complies with standard lending policies and procedures, including use of "insider" procedures, does not necessarily mean that the loan is "made on a basis which assures repayment." Moreover, this approach would not give lending institutions, candidates and political committees any guidelines on what is "assurance of repayment." The rules thus do not take this approach.

The notice also requested comments on whether the rules should include any limit on the amount of loans that a candidate or political committee could have outstanding at any given time. Four commenters opposed setting any such limits, since borrowing capacity may vary substantially between candidates. Several argued that the Commission does not have the statutory authority to impose such limits.

No commenters responded in favor of this proposal. The rules do not include any limitation on the amount of loans a candidate or committee can have outstanding.

The notice invited comments on whether the regulations should require the borrower to set aside a certain percentage of pledged future funds when the borrower receives the funds. This requirement is unnecessary because of the final rules' requirement that a separate depository account be established, under certain circumstances. Also, establishing a mandatory set aside percentage would unnecessarily infringe on the ability of the bank and the borrower to structure each loan to reflect the particular circumstances of that loan.

The notice asked whether the Commission should require reporting of bank loans that are made close to a federal election. The FECA currently requires reporting of contributions of $1000 or more if they occur less than 20 days but more than 48 hours before an election. 2 U.S.C. 434(a)(6)(A); 11 CFR 104.5(f).

The Act clearly states at 2 U.S.C. 434(a)(6)(A) that any contribution received close to an election shall be reported within 48 hours. This requirement encompasses all loans except bank loans, since a bank loan which meets the statutory requirements is not a contribution. However, the proceeds of a bank loan obtained by a candidate, as well as any guarantees or endorsements of a bank loan, are subject to the 48 hour reporting requirement. The Commission sees no reason to add any additional requirements at this time.

Finally, the notice asked whether the rules should require loans made to political committees and candidates to include a due date for the loan that is at or near the election for which the loan is obtained. This approach would reflect a common banking practice, in which the timing of repayment is tied to the event for which the funds are used. For example, agricultural loans frequently fall due shortly after harvest.

All comments which addressed this issue responded negatively to this suggestion. These commenters said that due dates should be flexible, open to negotiation between lenders and borrowers. Also, while it may be difficult for a candidate to raise money after an unsuccessful campaign, it is also true that the kinds of collateral used by candidates and political committees are not necessarily received at the time of the election. The rules thus do not require loans to be subject to a due date at or near an election.

Part 100—Scope and Definitions

Section 100.7 Contribution

The rule specifies at paragraph (b)(11)(i) two general sources of repayment that the Commission will, by definition, find to have met the "assurance of repayment" standard: Traditional collateral, or a pledge of future receipts deposited in a separate account. A combination of these two methods is also acceptable.

The proposed rules would have required either traditional collateral or a pledge of future receipts deposited in a separate account to demonstrate that a loan is "made on a basis which assures repayment." This was presented as an either/or situation, so that a lending institution that wanted to make a loan backed in part by traditional collateral and in part by a pledge of future receipts might have felt obliged to make two separate loans to accomplish this purpose. Paragraph (b)(11)(i) has therefore been revised to specifically state that a loan may be obtained under either authorized method, or by using any combination of the two methods.

The Commission believes that this approach will give candidates and committees the greatest possible flexibility in obtaining bank loans, while still assuring that they are made on a basis which assures repayment.

Paragraph (b)(11)(i)(A) sets forth the requirements for loans obtained on the basis of traditional types of collateral and possible secondary sources of repayment. It includes at paragraph (b)(11)(i)(A)(*1*) a non-exhaustive list of collateral sources. This list is similar to, although not as specific as, the list of acceptable collateral in the Federal Reserve Act's section on an insured institution's dealings with an affiliate, found at 12 U.S.C. 371c(c)(1). In the Commission's view, the description of traditional collateral set forth in this paragraph is sufficiently precise to provide adequate guidelines without running the risk of inadvertently excluding some acceptable sources due to over-specificity. However, the Commission notes that the cited section of the Federal Reserve Act may also be consulted for guidance regarding specific collateral that would satisfy this rule.

Paragraph (b)(11)(i)(A)(*1*) also includes a requirement that, if a financial institution relies on traditional collateral, the institution must perfect a security interest in that collateral. The banking regulatory agencies supported this requirement, because it protects lenders.

Moreover, the rule states that, if a security interest is not senior enough to cover the amount of the loan and any senior liens in existence on the date of the loan, the candidate or political committee must pledge additional collateral for this purpose. It also requires that sufficient collateral be maintained at all times to cover the full amount of the loan.

The Federal Deposit Insurance Corporation noted that secured loans are normally made on the fair market value of the security plus a margin of safety, so that there is some allowance for liquidation costs and interest. That agency said that it would regard a secured loan as not made on a basis which assures repayment if there was no safety allowance for costs associated with liquidation. The Comptroller of the Currency noted that the Commission could require lending institutions to have a security interest sufficiently senior to cover the loan amount, and require that the sufficiency be maintained when there is a decrease in value of the collateral securing the loan.

The Commission has not added specific language regarding a margin of safety, but believes this can be a relevant consideration in certain cases. For example, if a bank normally requires sufficient collateral to cover a margin of safety, but fails to do so in making a loan to a candidate or political committee, this may be seen as an indication that the loan was not made in the ordinary course of business.

Two commenters suggested that the Commission amend the proposed language to include a "good faith" standard which would cover those times when a security interest is not perfected because of a filing error. However, there is no codification of a "good faith" standard in the Federal Reserve Act or its regulations with regard to perfecting a security interest. Rather, if a security interest is not perfected because of a filing error, the Board takes that factor into consideration should any action subsequently be required. The Commission intends to take a similar approach in dealing with situations where a security interest is not perfected due to a filing error.

Paragraph (b)(11)(i)(B) permits loans to be made on the basis of a committee's anticipated future receipts, including but not limited to public financing payments, contributions, or interest income, if certain requirements are met. These requirements include that (1) the loan be evidenced by a written agreement; (2) the loan amount not exceed the amount of pledged funds; (3) the loan be made in an amount no higher than a reasonable expectation of the receipt of future funds, based on documentation provided by the candidate or political committee to the lending institution; (4) the borrower establish a separate account; (5) the borrower deposit the pledged funds in this separate account, to be used to retire the debt in accordance with the loan agreement; and (6) if the borrower pledges public financing payments, the borrower authorize the Secretary of the Treasury to directly deposit such payments into the separate account.

Various commenters stated throughout this rulemaking that the Commission's regulatory scheme should be flexible enough to better accommodate borrowers, while not imposing unnecessary constraints on the regular business of lending institutions. Paragraph (b)(11)(i)(B) allows this flexibility by providing that loans not based on traditional collateral may still be considered "made on a basis which assures repayment." The requirements set forth in this paragraph act as safeguards, since these loans are generally regarded by the banking agencies as "unsecured."

The FDIC indicated that, to the extent a loan is not backed by traditional security, banks rely primarily on the borrower's income, and that of any cosigners or guarantors to the loan, as security for the loan. Similarly, the Office of Thrift Supervision stated that, while it had no problem with the idea of using future receipts, it felt that the loan determinations should be based on the sound credit background of the borrower and adequate safeguards as evaluated by the lending institution. These approaches, however, could result in impermissible contributions and expenditures. For example, if the lender considers the income of a presidential candidate who receives public financing payments as the only source of repayment for a $100,000 loan, the candidate will have exceeded the $50,000 limitation on expenditures from personal funds. 26 U.S.C. 9004(d), 9035. Similarly, if the lender considers the guarantee of one other person for a $100,000 loan, that person will have made an excessive contribution. 2 U.S.C. 441a(a)(1)(A).

The recommendation to allow loans that are based on future receipts derives from prior Commission actions. In enforcement matters and advisory opinions involving future receipts, the Commission has looked to whether adequate safeguards exist, such as a separate depository account or an assignment of funds. If these safeguards exist, the Commission has determined that the loan was made on a basis which assures repayment. See, *e.g.*, Matter Under Review ("MUR") 1195 and Advisory Opinion 1980–108, for examples of safeguards the Commission has found sufficient to assure repayment of bank loans under particular circumstances.

Paragraph (b)(11)(i)(B) is consistent with these actions. Even though loans based on future receipts may be technically "unsecured," the Commission believes that the safeguards included in the rule are sufficient to ensure that such loans are made on a basis which assures repayment, in compliance with the statutory requirement.

Paragraph (b)(11)(i)(B)(*2*), as set forth in the notice, stated that loans were to be "based on a reasonable expectation of the receipt of pledged funds." This paragraph has been revised to clarify that it is the responsibility of the candidate or political committee to furnish the lending institution with documentation, such as cash flow charts or other financial plans, that reasonably establish that such future funds will be available.

The Commission notes that this factor alone is not enough to satisfy the

"assurance of repayment" requirement. In addition, it does not absolve a lending institution from possible responsibility should a loan not otherwise be made on a basis which assures repayment. However, it provides another safeguard towards assuring that loans are made on that basis.

Paragraph (b)(11)(i)(B)(*3*) requires the candidate or political committee to set up a separate depository account for the receipt of any pledged future funds to be used to repay the debt. The Notice asked whether the regulations should allow a depository account that is not at the lending institution to be considered a valid source of repayment for loans obtained on the basis of future receipts. Commenters agreed that an assignment of contributions or other funds deposited with another financial institution would create as valid a security interest as a separate account at the lending institution. Also, courts have determined that, under the Uniform Commercial Code, assignments can be a valid security agreement. See *Mid-Eastern Electronics, Inc.* v. *First National Bank of Southern Maryland,* 455 F.2d 141, 146 (4th Cir. 1970) (assignment of proceeds which is signed by the maker and contains a description of collateral constitutes a security agreement); *Security Finance Group, Inc.* v. *United States,* 706 F.Supp. 83 (D.D.C. 1989) (debtor's assignment of proceeds of creditor gave creditor a security interest in the proceeds).

There are other reasons for allowing the assignment of funds at different depository institutions. Candidates may obtain loans from several institutions, and it may not be feasible to establish a separate account at each one. Also, the Department of the Treasury will only deposit matching fund payments into a single campaign depository. See, 11 CFR 9033.1(b)(7).

The final rule has thus been broadened to authorize the use of an account which is not at the lending institution where the loan is obtained as a depository for future receipts, if the candidate or political committee executes an assignment from that account to the lending institution, and notifies the depository institution of this assignment. A depository institution may seek to attach deposited funds if depositors do not meet their commitments to that institution; or it may fail to take action to freeze an account, if it does not know of the assignment. This notification requirement ensures that the depository institution is aware that some portion of the funds in a particular account has been pledged for other purposes.

The Commission notes that a separate depository account must be set up pursuant to paragraph (b)(11)(i)(B)(*3*) only if a committee has pledged future receipts as a source of repayment for all, or some portion, of a particular loan. If such an account is established, it can be structured in a variety of ways, as long as it complies with the requirement at paragraph (b)(11)(i)(B)(*4*) that the account be used for the purpose of retiring the debt according to the repayment requirements of the loan agreement. The borrower and the lending institution are thus free to structure the account, and the flow of funds in that account, in any manner consistent with the loan agreement.

For example, if the lender and borrower agree that $50,000 of a $100,000 loan is to be repaid using future receipts, at a rate of $10,000 a month for 5 months, the borrower must demonstrate that $10,000 will be available in the depository account at the time each such payment falls due. Additional amounts deposited in the account for any reason (e.g., public financing funds) may be withdrawn from the account, and used for other purposes. If all or part of the loan is repaid from other sources, any amount(s) so paid can also be withdrawn from the account, since they are no longer necessary "to assure repayment" of (that portion of) the loan.

Paragraphs (b)(11)(ii) of the proposed rules contained a presumption that a loan not obtained under either of the methods set forth in paragraph (b)(11)(i), or some combination of these methods, would not be considered made on a basis which assures repayment, unless the candidate or political committee could show otherwise. However, the Commission has now decided to consider the totality of circumstances on a case-by-case basis in determining whether loans that do not meet the criteria set forth at paragraph (b)(11)(i) were made on a basis which assures repayment.

Paragraphs (b)(11)(i)(A) and (B) provide avenues that, if followed, would clearly meet the "assurance of repayment" standard. Paragraph (b)(11)(ii) leaves open the possibility that other approaches, such as loans guaranteed in whole or in part by the borrower's signature, which are not specified in the rules, will also be found to have met this standard in specific cases.

Restructuring of Bank Loans

In issuing its final debt settlement rules last year, the Commission deferred until this rulemaking the question of how bank loans should be treated in the debt settlement process. The Explanation and Justification to those rules stated, "The Commission does not generally consider bank loans in the debt settlement process and does not intend to change its approach(,)" but noted that "(f)urther guidance on this may be provided in a separate rulemaking regarding the bank loan rules." 55 FR 26377, 26384 (June 27, 1990).

In response to the bank loan Notice, representatives from the Federal Reserve Board and the Office of Thrift Supervision stated that banks place primary emphasis on restructuring the terms of a loan if the borrower cannot repay it. Only if this proves impossible will a bank attempt to settle a particular loan or, as a last resort, write it off.

The final rules omit any reference to the settlement of loans from lending institutions. Rather, they provide at new § 104.3(d)(3), discussed below, that each time a loan is restructured to change its terms, the candidate or political committee must report it as a new loan. The terms of the restructured loan must again meet the "assurance of repayment" standard, as did the original loan.

This approach is consistent with Commission statements made over the course of the debt settlement rulemaking. While it is in the ordinary course of business for lending institutions to settle or write off certain loans, the Commission prefers not to encourage such actions, because this could result in prohibited contributions from lending institutions.

However, the Commission recognizes that, in certain cases, such as where a candidate declares bankruptcy or dies before anticipated funding can be raised, the settlement of a campaign loan may be the only realistic alternative. These extraordinary situations will be addressed by the Commission on a case-by-case basis.

Section 100.8 Expenditure

Revised paragraph 100.8(b)(12) is identical to revised § 100.7(b)(11), discussed above.

Section 104.3 Contents of Reports

The Notice requested comments on a proposal to require more detailed reporting of bank loans, and included draft supplements to Schedules C and C–P for candidates and political committees to report the required information. Revised section 104.3(d) implements these requirements through new reporting regulations.

A Schedule C–1 or C–P–1 must be filed with the next due report, for each bank loan obtained during the reporting period. Except as provided in paragraph

(d)(3), a Schedule C–1 or C–P–1 need only be filed once for each loan, at the time the loan is first reported.

New paragraph (d)(1) specifies the information required by the supplemental forms, while paragraph (d)(2) requires the candidate or political committee to submit a copy of the loan agreement to the Commission at the time the loan is first reported. Paragraph (d)(3) requires committees to file with their next due report a Schedule C–1 or C–P–1, if any draw was made on a line of credit or any loan was restructured to change the terms of repayment during the reporting period.

In drafting these requirements, the Commission sought to strike a balance, by requiring the minimum amount of information necessary to provide adequate disclosure for monitoring purposes, while avoiding requirements that would have unduly burdened borrowers and lenders. It also sought to respect privacy concerns of candidates and committees, by requiring that only a copy of the loan agreement be submitted to the Commission with the committee's reports. The Commission notes, however, that if questions later arise regarding the loan, in the course of a compliance or other action, it may request additional documentation.

The rules require information from the borrower and certification from the lender. Under paragraph (d)(1), the borrower must provide information about the loan at the time it is obtained, including the types and value of collateral pledged, whether a security interest was perfected in any traditional collateral, and when and where depository accounts for pledged funds were established. If no traditional collateral or other source of repayment was pledged, the borrower must show that the loan was made on another basis which assures repayment.

Paragraph (d)(1)(v) requires the lender to certify that, to the best of its knowledge, the information provided by the borrower is accurate; the interest rate is usual and customary; the loan was made in accordance with the financial institution's usual policies and practices; and the lending institution is aware of the requirement that the loan must be made on a basis which assures repayment, and has complied with the revised Commission regulations at §§ 100.7(b)(11) and 100.8(b)(12).

While most commenters supported the proposed requirement that the borrower provide information about the loan, some raised the concern that lenders will be held responsible if they sign the supplemental forms. These commenters urged that the rules require the borrower, but not the lender, to sign the forms.

However, the requirement that the lender certify that the information provided by the borrower is correct is justified on several grounds. Only the bank has access to some of the information that either served as the basis for making the loan, or relates to the satisfaction of certain requirements in the rules—such as whether the interest rate is usual and customary, or whether a security interest has been perfected. Also, lending institutions clearly have obligations and responsibilities under the FECA. Should a violation occur, they may be held liable regardless of which party is required to sign the supplemental forms. Finally, requiring a bank to certify that the borrower's information is accurate ensures that the bank is aware of the requirements of §§ 100.7(b)(11) and 100.8(b)(12).

A banking association suggested that, instead of this requirement, the Commission require the loan note to be attached to the disclosure form to assist the Commission in determining the basis on which the loan was made. The new rules already require political committees that obtain loans from lending institutions to submit the loan agreement, which contains the terms and conditions of the loan. However, knowing the terms of the loan is not sufficient for Commission purposes. It is also necessary to know, *inter alia*, if the terms are consistent with the bank's usual practices.

The FDIC suggested that, instead of requiring the lender to sign the conclusory statements as the Commission proposed, the rules should require the lender to state that "the loan was made on terms and conditions including interest no more favorable at the time than those imposed for similar extensions of credit to other borrowers of comparable credit worthiness." This is basically a definition of the ordinary course of business test. However, as already discussed, the "assurance of repayment" requirement may at times exceed the "ordinary course of business" standard. Thus, a statement that a loan meets the latter standard does not necessarily mean that it meets the former.

Paragraph (d)(2) requires the borrower to supply a copy of the loan agreement to the Commission at the time the loan is initially reported. The Commission expects the loan agreement to include such information as the interest rate at which the loan was made, the total of each payment (principal and interest), and any applicable later charges.

The draft Schedules C–1 and C–P–1 contained in the Notice would have required filers to include not only a signed copy of the loan agreement, but also any related security agreement(s), promissory note(s), and other related documents. The Commission has not determined that no other documentation is required when the report is filed. It again notes, however, that further documentation may be needed if questions arise with regard to a particular loan, or the original agreement does not contain all the required information.

Several commenters raised concerns about potential confidentiality problems of both the lending institution and the borrower if information in addition to that contained in the loan agreement was required. They argued that banks should be required to submit only those documents used in the ordinary course of making loans, and that to require anything further could conflict with certain state laws, in particular state privacy laws.

The FEC has authority to require the reporting of loan documentation. Under the Right to Financial Privacy Act, 12 U.S.C. 3401–3422, information involving financial transactions that is required by federal statute or regulation is exempt from the prohibitions and limitations of that Act. 12 U.S.C. 3413(d). This exemption encompasses information required to be reported under the FECA. The Right to Financial Privacy Act further exempts "the disclosure of financial records in accordance with procedures authorized by title 26." 12 U.S.C. 3413(c). Also, it has been held to supersede conflicting state laws. See, *e.g., In re Letter of Request for Judicial Assistance from the Tribunal Civil de Port-au-Prince, Republic of Haiti*, 669 F. Supp. 403 (S.D.Fla. 1987); *In re Grand Jury Subpoena (Connecticut Savings Bank)*, 481 F.Supp. 833 (D.Conn. 1979).

However, the Commission recognizes that practical problems may develop if it requires candidates and political committees to submit the documentation provided to lending institutions to the Commission at the time the loan is first reported. This documentation may include fundraising plans, cash flow charts, and other information which the borrower for tactical reasons my not want on the public record during a campaign. The rules thus require the candidate or political committee to submit documentation other than the loan agreement only to the lender. Should a loan later be questioned, the documentation could then be provided to the Commission.

As discussed above with regard to § 100.7(b)(11), the Commission has traditionally treated lines of credit the same as any other loan from a lending institution. However, there are currently no explicit rules on how political committees should report lines of credit.

The Commission's experience has been that some committees—typically presidential candidate committees that obtain large lines of credit—voluntarily report such information as when draws can be made and the maximum amount of each draw. However, they usually report lines of credit when the first draw is made, not when the line is first established.

Political committees are required to report the total amount of all "receipts" including loans, under 2 U.S.C. 434(b)(2) and 11 CFR 104.3(a)(2). Paragraphs (d)(1) and (d)(3) require candidates and political committees to include a Schedule C–1 or C–P–1 with their next report to the Commission whenever a line of credit is established, as well as each time a draw is made. In addition, the regulations specifically state at § § 100.7(b)(11)(i), 100.8(b)(12)(i), and 104.3(d)(1) that the bank loan rules apply to draws on lines of credit. Thus lines of credit are treated the same as other bank loans for purposes of these rules, except for the additional reporting requirement each time a draw is made.

The Commission notes that, if a loan is reported on schedule C, ordinarily there will be corresponding entries in Schedule A, both in the summary and in the itemized reports. This will not be so if the establishment of a line of credit is reported—since there is in fact no loan until such time as a draw is made, there is nothing to report on Schedule A until that time.

Nevertheless, the Commission believes it is important that lines of credit be reported at the time they are established. This approach minimizes the possibility that the same collateral was used for more than one loan or line of credit. It also provides a more accurate picture of a candidate's financial status for the public record.

As discussed above, the revised rules omit any reference to the settlement of loans from lending institutions. Rather, they provide at paragraph (d)(3) that each time a loan is restructured to change its terms, the candidate or political committee must report it as a new loan.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 104

Campaign funds, Political candidates, Political committees and parties, Reporting requirements.

Certification of no effect pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that the primary purpose of the amendments is to clarify the Commission's rules on the making of bank loans to candidates and political committees. This does not impose a significant economic burden because any entities affected are already required to comply with the Act's requirements in this area.

For the reasons set out in the preamble, subchapter A, chapter I, part 100 of title 11 of the Code of Federal Regulations is amended as follows:

PART 100—SCOPE AND DEFINITIONS

1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8).

2. Section 100 is amended by adding paragraph (b)(11) (i) and (ii) to read as follows:

§ 100.7 Contribution (2 U.S.C. 431(8)).

* * * * *

(b) * * *

(11) * * *

(i) A loan, including a line of credit, shall be considered made on a basis which assures repayment if it is obtained using either of the sources of repayment described in paragraphs (b)(11)(i) (A) or (B) of this section, or a combination of paragraphs (b)(11)(i) (A) and (B) of this section:

(A)(*1*) The lending institution making the loan has perfected a security interest in collateral owned by the candidate or political committee receiving the loan, the fair market value of the collateral is equal to or greater than the loan amount and any senior liens as determined on the date of the loan, and the candidate or political committee provides documentation to show that the lending institution has a perfected security interest in the collateral. Sources of collateral include, but are not limited to, ownership in real estate, personal property, goods, negotiable instruments, certificates of deposit, chattel papers, stocks, accounts receivable and cash on deposit.

(*2*) Amounts guaranteed by secondary sources of repayment, such as guarantors and cosigners, shall not exceed the contribution limits of 11 CFR part 110 or contravene the prohibitions of 11 CFR 110.4, part 114 and part 115; or

(B) The lending institution making the loan has obtained a written agreement whereby the candidate or political committee receiving the loan has pledged future receipts, such as public financing payments under 11 CFR part 9001 *et seq.* or part 9031 *et seq.*, contributions, or interest income, provided that:

(*1*) The amount of the loan or loans obtained on the basis of such funds does not exceed the amount of pledged funds;

(*2*) Loan amounts are based on a reasonable expectation of the receipt of pledged funds. To that end, the candidate or political committee must furnish the lending institution documentation, i.e., cash flow charts or other financial plans, that reasonably establish that such future funds will be available;

(*3*) A separate depository account is established at the lending institution or the lender obtains an assignment from the candidate or political committee to access funds in a committee account at another depository institution that meets the requirements of 11 CFR 103.2, and the committee has notified the other institution of this assignment;

(*4*) The loan agreement requires the deposit of the public financing payments, contributions and interest income pledged as collateral into the separate depository account for the purpose of retiring the debt according to the repayment requirements of the loan agreement; and

(*5*) In the case of public financing payments, the borrower authorizes the Secretary of the Treasury to directly deposit the payments into the depository account for the purpose of retiring the debt.

(ii) If the requirements set forth in paragraph (b)(11)(i) of this section are not met, the Commission will consider the totality of the circumstances on a case-by-case basis in determining whether a loan was made on a basis which assures repayment.

* * * * *

3. Section 100.8 is amended by adding paragraph (b)(12) (i) and (ii) to read as follows:

§ 100.8 Expenditure (2 U.S.C. 431(9)).

* * * * *

(b) * * *

(12) * * *

(i) A loan, including a line of credit, shall be considered made on a basis which assures repayment if it is obtained using either of the sources of repayment described in paragraphs

(b)(12)(i) (A) or (B) of this section, or a combination of paragraphs (b)(12)(i) (A) and (B) of this section:

(A)(*1*) The lending institution making the loan has perfected a security interest in collateral owned by the candidate or political committee receiving the loan; the fair market value of the collateral is equal to or greater than the loan amount and any senior liens as determined on the date of the loan; and the candidate or political committee provides documentation to show that the lending institution has a perfected security interest in the collateral. Sources of collateral include, but are not limited to, ownership in real estate, personal property, goods, negotiable instruments, certificates of deposit, chattel papers, stocks, accounts receivable and cash on deposit.

(*2*) Amounts guaranteed by secondary sources of repayment, such as guarantors and cosigners, shall not exceed the contribution limits of 11 CFR part 110 or contravene the prohibitions of 11 CFR 110.4, part 114 and part 115; or

(B) The lending institution making the loan has obtained a written agreement whereby the candidate or political committee receiving the loan has pledged future receipts, such as public financing payments under 11 CFR part 9001 *et seq.* or part 9031 *et seq.*, contributions, or interest income, provided that:

(*1*) The amount of the loan(s) obtained the basis of such funds does not exceed the amount of pledged funds;

(*2*) Loan amounts are based on a reasonable expectation of the receipt of pledged funds. To that end, the candidate or political committee must furnish the lending institution documentation, i.e., cash flow charts or other financial plans, that reasonably establish that such future funds will be available;

(*3*) A separate depository account is established at the lending institution or the lender obtains an assignment from the candidate or political committee to access funds in a committee account at another depository institution that meets the requirements of 11 CFR 103.2, and the committee has notified the other institution of this assignment;

(*4*) The loan agreement requires the deposit of the public financing payments, contributions, interest or other income pledged as collateral into the separate depository account for the purpose of retiring the debt according to the repayment requirements of the loan; and

(*5*) In the case of public financing payments, the borrower authorizes the Secretary of the Treasury to directly deposit the payments into the depository account for the purpose of retiring the debt.

(ii) If the requirements set forth in paragraph (b)(12)(i) of this section are not met, the Commission will consider the totality of circumstances on a case-by-case basis in determining whether a loan was made on a basis which assures repayment.

PART 104—REPORTS BY POLITICAL COMMITTEES

4. The authority citation for part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8), 438(b).

5. Section 104.3 is amended by adding paragraph (d) (1), (2) and (3) to read as follows:

§ 104.3 Contents of reports (2 U.S.C. 434(b)).

* * * * *

(d) * * *

(1) In addition, when a candidate or political committee obtains a loan from, or establishes a line of credit at, a lending institution as described in 11 CFR 100.7(b)(11) and 100.8(b)(12), it shall disclose in the next due report the following information on schedule C–1 or C–P–1:

(i) The date and amount of the loan or line of credit;

(ii) The interest rate and repayment schedule of the loan, or of each draw on the line of credit;

(iii) The types and value of traditional collateral or other sources of repayment that secure the loan or the line of credit, and whether that security interest is perfected;

(iv) An explanation of the basis upon which the loan was made or the line of credit established, if not made on the basis of either traditional collateral or the other sources of repayment described in 11 CFR 100.7(b)(11)(i)(A) and (B) and 100.8(b)(12)(i)(A) and (B); and

(v) a certification from the lending institution that the borrower's responses to paragraphs (d)(1)(i)–(iv) of this section are accurate, to the best of the lending institution's knowledge; that the loan was made or the line of credit established on terms and conditions (including interest rate) no more favorable at the time than those imposed for similar extensions of credit to other borrowers of comparable credit worthiness; and that the lending institution is aware of the requirement that a loan or a line of credit must be made on a basis which assures repayment and that the lending institution has complied with Commission regulations at 11 CFR 100.7(b)(11) and 100.8(b)(12).

(2) The political committee shall submit a copy of the loan or line of credit agreement which describes the terms and conditions of the loan or line of credit when it files Schedule C–1 or C–P–1.

(3) The political committee shall file in the next due report a Schedule C–1 or C–P–1 each time a draw is made on a line of credit, and each time a loan or line of credit is restructured to change the terms of repayment.

* * * * *

Dated: December 20, 1991.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 91–30776 Filed 12–26–91; 8:45 am]

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Friday
December 27, 1991

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1 et al.

Federal Acquisition Circular 90-9; Final and Interim Rules; Technical Amendments; and Notice of Availability

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Federal Acquisition Circular 90–9]

Federal Acquisition Regulation; Introduction of Miscellaneous Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules and technical amendments.

SUMMARY: This document serves to introduce and relate together the final and interim rule documents and technical amendments which follow and which comprise Federal Acquisition Circular (FAC) 90–9. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to issue FAC 90–9 to amend the Federal Acquisition Regulation (FAR) to implement changes in the following subject areas:

Item	Subject	FAR case	DAR case	Analyst
I	Publicizing Procurement Actions	91–44	89–118	O'Neill.
II	Time Change for Announcement of Contract Awards	91–54	91–30	Scott.
III	Surveys of Blind and Other Severely Handicapped Workshops	90–47	90–417	Loeb.
IV	Debarment, Suspension, and Ineligibility	90–56	90–418c	Loeb.
V	Preference for Commercial Products (Interim)	91–48	89–315	O'Neill.
VI	Bundling of Requirements (Interim)	91–49	90–334	Scott.
VII	Determination and Findings of Nonavailability (Steel Conduit & Crane Rail)	91–47	91–020/91–021	Rosinski.
VIII	Deviations—FAR Part 31	91–46	90–401	Olson.
IX	Novation and Change of Name Agreements	90–65	90–40	Klein.
X	Termination of Contracts	91–43	90–513	Klein.
XI	Extraordinary Contractual Actions	91–15	90–321	Klein.
XII	Inspection of Services—Fixed Price	90–58	90–455	Klein.
XIII	Technical Amendments and Corrections (Also, pen-and-ink change to Optional Form 333)			

DATES: For effective dates and comment dates, see individual documents which follow.

ADDRESSES: Interested parties should submit written comments to:

General Services Administration, FAR Secretariat (VRS), ATTN: Deloris Baker, 18th & F Streets, NW., room 4041, Washington, DC 20405.

Please cite FAC 90–9 and the FAR case number(s) in all correspondence related to this and the following documents.

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in relation to each FAR case or subject area. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–9 and FAR case number(s).

SUPPLEMENTARY INFORMATION: Federal Acquisition Circular 90–9 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Publicizing Procurement Actions (FAR Case 91–44)

FAR 5.207(b)(4) is amended to provide contracting officers with notice that 200 character spaces are available for a descriptive summary of the award in Item 8. Item 17 is also amended to advise the contracting officer that this item is to be used for synopsizing solicitations and contract actions, but not for contract awards.

Item II—Time Change for Announcement of Contract Awards (FAR Case 91–54)

FAR 5.303(a) is amended to change the time for announcement of contract awards from 4 p.m. to 5 p.m. Eastern time.

Item III—Surveys of Blind and Other Severely Handicapped Workshops (FAR Case 90–47)

FAR 9.107 is added to give guidance on conducting capability surveys on blind and other severely handicapped workshops. A cross reference to 9.107 is added to 8.702(a).

Item IV—Debarment, Suspension, and Ineligibility (FAR Case 90–56)

Ten examples of remedial measures or mitigating factors that debarring officials should consider when making a decision to debar or suspend a contractor have been added at 9.406–1(a). New language at 9.407–1 suggests consideration of the remedial measures or mitigating factors in connection with suspension actions.

Item V—Preference for Commercial Products (Interim) (FAR Case 91–48)

Sections 10.001 and 10.002 are amended and 10.006(a) is being revised on an interim basis to provide an order of precedence for the various types of item descriptions used in contracting. The rule implements section 824 of the DOD Fiscal Year 1990 Authorization Act.

Item VI—Bundling of Requirements (Interim) (FAR Case 91–49)

FAR 19.202–1 is amended to add subparagraph (e) which requires contracting officers to forward proposed acquisition packages meeting specified criteria to Small Business Procurement Center Representatives for review. FAR 19.402(c) is amended to add reviewing of the proposed acquisitions as a duty of the SBA Procurement Center Representative.

Item VII—Determination and Findings of Nonavailability (Steel Conduit and Crane Rail) (FAR Case 91–47)

The Federal Acquisition Regulation is amended to incorporate the addition of 85-pound per foot crane rail and 5" and 6" steel conduit into the Buy American List of Exempt Items in FAR 25.108(d)(1).

Item VIII—Deviations—FAR Part 31 (FAR Case 91–46)

FAR 31.101 is amended to change the authority for approval of class deviations from the FAR part 31 cost principles for the Department of Defense.

Item IX—Novation and Change of Name Agreements (FAR Case 90–65)

FAR 42.1205(a)(3) is amended by making the submission requirements for "total dollar value as amended" and the "remaining unpaid balance" required only if requested by the contracting officer. It is felt that this data is not needed in all cases and in most, if not all cases, it is out of date shortly after receipt.

Item X—Termination of Contracts (Defense Management Review) (FAR Case 91–43)

FAR 49.101(f) is added to clearly establish that the release of excess funds after termination is the responsibility of the contracting officer unless specifically delegated to the termination contracting officer. A corresponding change is made to 49.105–2. FAR 49.110(a) is amended by revising its heading to read "Settlement negotiation memorandum" to differentiate from the memorandum developed under 15.800, Price Negotiation.

Item XI—Extraordinary Contractual Actions (FAR Case 91–15)

As a result of recent statutory revisions to 50 U.S.C. 1431, FAR 50.203(b)(4) is being revised by removing the words "and neither House of Congress has adopted a resolution disapproving the obligation."

Item XII—Inspection of Services—Fixed-Price (FAR Case 90–58)

FAR 52.246–4, Inspection of Services—Fixed-Price, is revised to allow the Government to inspect or test at the contractor's or subcontractor's facility and requires the contractor to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties.

Item XIII—Technical Amendments and Corrections

Technical amendments or corrections have been made to FAR sections 8.705–2, 8.705–4(a), 22.1003–5(k), 33.103(b)(1), 45.608–8(b), 52.202–1, 52.215–39, 52.228–11(b)(1), and 53.203(b) to correct inaccuracies and update information. The authorization for use and local reproduction of Optional Form 333 requires a pen-and-ink change by revising the date to read "March 31, 1992".

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular

[Number 90–9]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90–9 is effective February 25, 1992, except for Items V and VI, which are effective December 27, 1991.

Dated: December 4, 1991.

Eleanor R. Spector,

Director of Defense Procurement.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90–9 is effective February 25, 1992, except for Items V and VI, which are effective December 27, 1991.

Dated: December 11, 1991.

Richard H. Hopf, III,

Associate Administrator, for Acquisition Policy, General Services Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90–9 is effective February 25, 1992, except for Items V and VI, which are effective December 27, 1991.

Dated: December 17, 1991.

Darleen A. Druyun,

Assistant Administrator for Procurement, NASA.

[FR Doc. 91–30752 Filed 12–26–91; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 5

[FAC 90–9; FAR Case 91–44; Item I]

RIN 9000–AE39

Federal Acquisition Regulation; Publicizing Procurement Actions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to make changes to the Federal Acquisition Regulation (FAR) to amend FAR 5.207(b)(4) to provide contracting officers more explicit instructions on synopsizing information for publication in the Commerce Business Daily.

EFFECTIVE DATE: February 25, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–9, FAR case 91–44.

SUPPLEMENTARY INFORMATION:

A. Background

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council believe that in order to increase subcontracting opportunities for small business, Commerce Business Daily (CBD) synopses must include clear, concise descriptions of the supplies or services needed. Such information will allow interested parties to make informed business judgments as to whether they can participate in a Government contract. The instructions being provided to contracting officers by this rule will improve the quality of CBD synopses, thereby increasing potential for subcontracting opportunities.

B. Regulatory Flexibility Act

This rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite FAR case 91–44 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.* Approval for the affected FAR segments was

originally provided under OMB Control Number 9000–0102.

List of Subjects in 48 CFR Part 5

Government procurement.

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 5 is amended as set forth below:

PART 5—PUBLICIZING CONTRACT ACTIONS

1. The authority citation for 48 CFR part 5 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

5.207 [Amended]

2. Section 5.207 is amended in the text following paragraph (b)(4) by inserting at the end of Item 8 the parenthetical "(200 character spaces available.)"; and at the end of Item 17, removing the last parenthesis and inserting the sentence "Insert N/A when synopsizing awards.)"

[FR Doc. 91–30753 Filed 12–26–91; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 5

[FAC 90–9; FAR Case 91–54; Item II]

Federal Acquisition Regulation; Time Change for Announcement of Contract Awards

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to amend FAR subpart 5.3 to change the time for announcement of contract awards from 4 p.m. to 5 p.m. Eastern time.

EFFECTIVE DATE: February 25, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501–0168 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–9, FAR case 91–54.

SUPPLEMENTARY INFORMATION:

A. Background

The U.S. Securities and Exchange Commission has authorized the New York Stock Exchange to trade stocks for one additional hour each trading day. The trading day will now end at 5 p.m. Eastern time instead of 4 p.m. Eastern time. Accordingly, the time for announcement of contract awards has been changed to 5 p.m. Eastern time.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite FAR case 91–54 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 5

Government procurement.

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 5 is amended as set forth below:

PART 5—PUBLICIZING CONTRACT ACTIONS

1. The authority citation for 48 CFR part 5 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

5.303 [Amended]

2. Section 5.303(a) is amended in the first sentence by adding "5 p.m." after the word "by" and in the third sentence by revising "4 p.m." to read "5 p.m."

[FR Doc. 91–30754 Filed 12–26–91; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8 and 9

[FAC 90–9; FAR Case 90–47; Item III]

RIN 9000–AE49

Federal Acquisition Regulation; Surveys of Blind and Other Severely Handicapped Workshops

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to amend § 8.702 and add § 9.107 to include guidance on capability surveys for the blind and other severely handicapped workshops. The purpose of such guidance is to inform contracting officers as to their role in determining the responsibility of blind and other severely handicapped workshops.

EFFECTIVE DATE: February 25, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Edward C. Loeb at (202) 501–4547 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–9, FAR case 90–47.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577; consequently, the Regulatory Flexibility Act does not apply.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 8 and 9

Government procurement.

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 8 and 9 are amended as set forth below:

1. The authority citation for 48 CFR parts 8 and 9 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.702 [Amended]

2. Section 8.702 is amended in paragraph (a) by removing the semicolon at the end of the sentence and inserting in its place "(see 9.107);"

PART 9—CONTRACTOR QUALIFICATIONS

3. Section 9.107 is added to read as follows:

9.107 Surveys of blind and other severely handicapped workshops.

(a) The Committee for Purchase from the Blind and Other Severely Handicapped (Committee), as authorized by 41 U.S.C. 46–48c, determines what supplies and services Federal agencies are required to purchase from workshops for the blind and other severely handicapped (see subpart 8.7). The Committee is required to find a workshop capable of producing the supplies or providing the services before the workshop can be designated as a mandatory source under the Committee's program. The Committee may request a contracting office to assist in assessing the capabilities of a workshop.

(b) The contracting office, upon request from the Committee, shall request a capability survey from the activity responsible for performing preaward surveys, or notify the Committee that the workshop is capable, with supporting rationale, and that the survey is waived. The capability survey will focus on the technical and production capabilities and applicable preaward survey elements to furnish specific supplies or services being considered for addition to the Procurement List.

(c) The contracting office shall use the Standard Form 1403 to request a capability survey of blind and other severely handicapped organizations.

(d) The contracting office shall furnish a copy of the completed survey, or notice that the workshop is capable and the survey is waived, to the Executive Director, Committee for Purchase from the Blind and Other Severely Handicapped.

[FR Doc. 91–30755 Filed 12–26–91; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 9

RIN 9000–AE–25

[FAC 90–9; FAR Case 90–56; Item IV]

Federal Acquisition Regulation; Debarment, Suspension, and Ineligibility

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to add to FAR 9.406–1(a) a list of 10 examples of remedial measures or mitigating factors that debarring officials should consider when making a decision to debar a contractor. Additionally, new language at 9.407–1 suggests consideration of the remedial measures or mitigating factors in connection with suspension actions.

EFFECTIVE DATE: February 25, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb at (202) 501–4547 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–9, FAR case 90–56.

SUPPLEMENTARY INFORMATION:

A. Background

This revision is part of an on-going effort to make suspension and debarment procedures uniform throughout the Federal Government. The change will add remedial measures or mitigating factors for use by debarring officials when making debarment decisions. The remedial measures and mitigating factors may be considered by suspension officials in reaching a decision concerning a suspension action.

B. Regulatory Flexibility Act

This change is not expected to have a significant cost or administrative impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it merely provides procedural and policy guidance to debarring and suspending officials and imposes no requirements of any kind upon small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 9

Government procurement.

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 9 is amended as set forth below:

PART 9—CONTRACTOR QUALIFICATIONS

1. The authority citation for 48 CFR part 9 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 9.406–1 is amended by revising paragraph (a) to read as follows:

9.406–1 General.

(a) It is the debarring official's responsibility to determine whether debarment is in the Government's interest. The debarring official may, in the public interest, debar a contractor for any of the causes in 9.406–2, using the procedures in 9.406–3. The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any remedial measures or mitigating factors should be considered in making any debarment decision. Before arriving at any debarment decision, the debarring official should consider factors such as the following:

(1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any Government investigation of the activity cited as a cause for debarment.

(2) Whether the contractor brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner.

(3) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.

(4) Whether the contractor cooperated fully with Government agencies during

the investigation and any court or administrative action.

(5) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.

(6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment.

(7) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the Government.

(8) Whether the contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs.

(9) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment.

(10) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

The existence or nonexistence of any mitigating factors or remedial measures such as set forth in this paragraph (a) is not necessarily determinative of a contractor's present responsibility. Accordingly, if a cause for debarment exists, the contractor has the burden of demonstrating, to the satisfaction of the debarring official, its present responsibility and that debarment is not necessary.

* * * * *

3. Section 9.407–1 is amended by redesignating paragraph (b) as (b)(1) and by adding paragraph (b)(2) to read as follows:

9.407–1 General.

* * * * *

(b)(1) * * *

(b)(2) The existence of a cause for suspension does not necessarily require that the contractor be suspended. The suspending official should consider the seriousness of the contractor's acts or omissions and may, but is not required to, consider remedial measures or mitigating factors, such as those set forth in 9.406–1(a). A contractor has the burden of promptly presenting to the suspending official evidence of remedial measures or mitigating factors when it has reason to know that a cause for suspension exists. The existence or nonexistence of any remedial measures or mitigating factors is not necessarily determinative of a contractor's present responsibility.

* * * * *

[FR Doc. 91–30756 Filed 12–26–91; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 10

[FAC 90–9; FAR Case 91–48; Item V]

Federal Acquisition Regulation; Preference for Commercial Products

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to amend Federal Acquisition Regulation (FAR) sections 10.001, 10.002(d), and 10.006(a)(2) to provide an order of preference for the various types of item descriptions used in contracting. The rule also removes the requirement for mandatory use of military specifications by the Department of Defense. The intent of the rule is to increase the use of voluntary standards and commercial item descriptions, which in turn will facilitate the use of commercial and other nondevelopmental items.

DATES: *Effective Date:* December 27, 1991.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 25, 1992 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), ATTN: Deloris Baker, 18th & F Streets, NW., Room 4041, Washington, DC 20405.

Please cite FAC 90–9, FAR case 91–48 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–9, FAR case 91–48.

SUPPLEMENTARY INFORMATION:

A. Background

Section 2325 of title 10, United States Code, requires, to the maximum extent practicable, that DOD requirements be stated in terms of (1) functions to be performed, (2) performance required, or (3) essential physical characteristics, and that such requirements are fulfilled through the acquisition of nondevelopmental items. Additionally, OMB Circular A–119 established the policy, in 1982, that the Federal Government should rely on the use of voluntary standards to the maximum extent feasible. In addition, section 824(c) of the DOD Fiscal Year 1990 Authorization Act further requires the Secretary of Defense to consider whether revisions to the regulations governing specifications, standards, and other purchase descriptions are necessary to implement the statutory requirement of 10 U.S.C. 2325. The FAR revisions in this interim rule are necessary to implement these statutory requirements.

Currently, FAR 10.006(a)(2) contains a requirement for mandatory use of military specifications by DOD. This interim rule removes this requirement and establishes a clear order of preference at 10.002(d) for choosing item descriptions giving preference to the use of voluntary standards, in general, and for use of commercial item descriptions for commercial products.

B. Regulatory Flexibility Act

This interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule will impact any contractor that wants to do business with the Federal Government. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

The interim change to the FAR is necessary to implement section 2325 of title 10, United States Code, and OMB Circular A–119. The changes direct preferential use of voluntary standards and commercial item descriptions over Federal and military specifications. The rule will affect all small businesses that want to contract with the Government. There are no burden requirements or duplicate rules, nor are other alternatives available. A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration.

A copy of the IRFA may be obtained from the FAR Secretariat. Comments from small entities concerning the

affected FAR subparts are invited and will be considered in accordance with section 610. Such comments must be submitted separately and cite FAR case 91–48 in all correspondence.

C. Paperwork Reduction Act

This interim rule does not impose any reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) to issue the regulations pertaining to preference for commercial products as an interim rule. Urgent and compelling reasons exist to publish an interim rule having a significant impact on the public, prior to affording the public an opportunity to comment. Section 824(c) of the DOD Fiscal Year 1990 Authorization Act required that regulations be prescribed by August 29, 1990, that ensure that requirements are stated in terms of functions to be performed, performance required, or essential physical characteristics.

List of Subjects in 48 CFR Part 10

Government procurement.

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 10 is amended as set forth below:

PART 10—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

1. The authority citation for 48 CFR part 10 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 10.001 is amended by adding the definitions "Commercial item description" and "Product description" in alphabetical order to read as follows:

10.001 Definitions.

* * * * *

Commercial item description (CID) means an indexed, simplified product description managed by the General Services Administration that describes, by functional or performance characteristics, the available, acceptable commercial products that will satisfy the Government's needs.

* * * * *

Product description, as used in this part, is the generic term for documents used for acquisition and management purposes, such as specifications, standards, voluntary standards, commercial item descriptions, or purchase descriptions.

* * * * *

3. Section 10.002 is amended by redesignating paragraph (d) as paragraph (e); by inserting a comma after the word "specifications" in the first sentence of paragraph (e); and by adding a new paragraph (d) to read as follows:

10.002 Policy.

* * * * *

(d)(1) In fulfilling the requirements of OMB Circular A–119, Federal Participation in Development and Use of Voluntary Standards, and FAR part 11, agencies shall, to the maximum practicable extent, use—

(i) Voluntary standards in lieu of other product descriptions, or as part of other product descriptions;

(ii) Commercial item descriptions in the acquisition of commercial or commercial-type products whenever voluntary standards cannot be used;

(iii) Government specifications stated in terms of functions to be performed or performance required, when voluntary standards or commercial item descriptions cannot be used; or

(iv) Government specifications stated in terms of material, finish, schematics, tolerances, operating characteristics, component parts, or other design requirements only when no other form of product description can be used.

(2) The above order of preference shall apply unless it—

(i) Is inconsistent with requirements of law; or

(ii) Does not meet the Government's needs.

* * * * *

4. Section 10.006 is amended by revising paragraph (a) to read as follows:

10.006 Using specifications and standards.

(a) *Mandatory specifications and standards.* Unless otherwise authorized by law or approved under 10.007(a), specifications and standards listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions are mandatory for use by all agencies acquiring supplies or services covered by such specifications and standards, except when the acquisition is—

(1) Required under an unusual and compelling urgency, and using the indexed product description would delay obtaining the requirement;

(2) Under the small purchase limitation at 13.000;

(3) For products acquired and used overseas;

(4) For items, excluding military clothing, acquired for authorized resale; or

(5) For construction or new installations of equipment, where nationally recognized industry or technical source specifications and standards are available.

* * * * *

[FR Doc. 91–30757 Filed 12–26–91; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 90–9; FAR Case 91–49; Item VI]

Federal Acquisition Regulation; Bundling of Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to amend FAR 19.202–1 to require contracting officers to forward proposed acquisitions meeting specified criteria to Small Business Procurement Center Representatives for review, and 19.402 to specify review of proposed acquisition as a procurement center representative duty.

DATES: *Effective Date:* December 27, 1991.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before February 25, 1992, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4041, ATTN: Deloris Baker, Washington, DC 20405.

Please cite FAC 90–9, FAR case 91–49 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501–0168 in reference in this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–9, FAR case 91–49.

SUPPLEMENTARY INFORMATION:

A. Background

Section 208 of Public Law 101–574 requires, whenever a proposed procurement of supplies or services currently being provided by a small business is of a quantity or estimated dollar value which makes small business prime contracting unlikely or when discrete construction projects are consolidated, that the procurement activity provide a copy of the proposed acquisition to the activity's Small Business Procurement Center Representative for review at least 30 days prior to the issuance of the solicitation.

B. Regulatory Flexibility Act

This interim rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments are invited for small businesses and other interested parties and will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite FAR case 91–49 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

Pursuant to 41 U.S.C. 418b, urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule reflects section 208 of Public Law 101–574, dated November 15, 1990, which requires contracting officers to provide Small Business Procurement Center Representatives with a copy of proposed acquisitions for review whenever the quantity or estimated dollar value makes small business prime contracting unlikely. This change in internal Government operating procedures may be beneficial to small business contractors because it provides additional opportunities for them to compete for Government contracts.

List of Subjects in 48 CFR Part 19

Government procurement.

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 19 is amended as set forth below:

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

1. The authority citation for 48 CFR part 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 19.202–1 is amended by adding paragraph (e) to read as follows:

19.202–1 Encouraging small business participation in acquisitions.

* * * * *

(e)(1) Provide a copy of the proposed acquisition package to the SBA procurement center representative at least 30 days prior to the issuance of the solicitation if—

(i) The proposed acquisition is for supplies or services currently being provided by a small business and the proposed acquisition is of a quantity or estimated dollar value, the magnitude of which makes it unlikely that small businesses can compete for the prime contract, or

(ii) The proposed acquisition is for construction and seeks to package or consolidate discrete construction projects and the magnitude of this consolidation makes it unlikely that small businesses can compete for the prime contract.

(2) The contracting officer shall also provide a statement explaining why the—

(i) Proposed acquisition cannot be divided into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement;

(ii) Delivery schedules cannot be established on a basis that will encourage small business participation to the extent consistent with the actual requirements of the Government;

(iii) Proposed acquisition cannot be structured so as to make it likely that small businesses can compete for the prime contract; or

(iv) Consolidated construction project cannot be acquired as separate discrete projects.

(3) The 30-day notification process shall occur concurrently with other processing steps required prior to the issuance of the solicitation.

(4) If the contracting officer rejects the SBA procurement center representative's recommendation, made in accordance with 19.402(c)(2), the contracting officer shall document the basis for the rejection and notify the SBA procurement center representative in accordance with 19.505.

3. Section 19.402 is amended by redesignating paragraphs (c)(2) through (c)(5) as (c)(3) through (c)(6), and by adding a new (c)(2) to read as follows:

19.402 Small Business Administration procurement center representatives.

* * * * *

(c) * * *

(2) Reviewing proposed acquisition packages provided in accordance with 19.202–1(e). If the SBA procurement center representative believes that the acquisition, as proposed, makes it unlikely that small businesses can compete for the prime contract, the representative shall recommend any alternate contracting method that the representative reasonably believes will increase small business prime contracting opportunities. The recommendation shall be made to the contracting officer within 15 days after receipt of the package.

* * * * *

[FR Doc. 91–30758 Filed 12–26–91; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAC 90–9; FAR Case 91–47; Item VII]

Federal Acquisition Regulation; Determination and Findings of Nonavailability (Steel Conduit and Crane Rail)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to amend the FAR at 25.108(d)(1) with the addition of crane rail (85-pound per foot) and steel conduit (5" and 6") to the Buy American List of Exempt Items for information only.

EFFECTIVE DATE: February 25, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Rosinski at (202) 501–0692 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–9, FAR case 91–47.

SUPPLEMENTARY INFORMATION:

A. Background

The addition of these items to the list in FAR 25.108(d)(1) arose as a result of an agency's determination of nonavailability under the Buy American Act of 85-pound per foot crane rail and 5" and 6" steel conduit.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAR case 91–47 (FAC 90–9) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 25 is amended as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR part 25 continues to read as follows:

Authority: 50 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

§ 25.108 [Amended]

2. Section 25.108 is amended in paragraph (d)(1) by adding the items "Crane rail (85-pound per foot)." and "Steel conduit (5" and 6")." in alphabetical order.

[FR Doc. 91–30759 Filed 12–26–91; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 90–9; FAR Case 91–46; Item VIII]

Federal Acquisition Regulation; Deviations—FAR Part 31

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to revise FAR 31.101 to change the approval authority within DOD for deviations from the cost principles in FAR part 31.

EFFECTIVE DATE: February 25, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy F. Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–9, FAR case 91–46.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite FAR case 91–46 in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 31 is amended as set forth below:

PART 1—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

31.101 [Amended]

2. Section 31.101 is amended in the third sentence by removing the words "DAR Council" and inserting in its place "Director of Defense Procurement, Office of the Under Secretary of Defense for Acquisition (USD(A)DP),"; and in the last sentence by removing the words "DAR Council" and inserting in its place "USD(A)DP".

[FR Doc. 91–30760 Filed 12–26–91; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 42

[FAC 90–9; FAR Case 90–65; Item IX]

RIN 9000–AE59

Federal Acquisition Regulation; Novation and Change of Name Agreements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to amend FAR 42.1205(a)(3) by making the current requirements listed in (a)(3) (iii) and (iv) required only if requested by the contracting officer. It was felt that this data is not needed in all cases and in most, if not all cases, it is out of date shortly after receipt.

EFFECTIVE DATE: February 25, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–9, FAR case 90–65.

SUPPLEMENTARY INFORMATION:

A. Background

This change was prompted by a deviation requested by the Department of Health and Human Services. A

number of contractors have questioned the need and value to the Government of furnishing the data required by 42.1205(a)(3) (iii) and (iv); *i.e.*, the total dollar value as amended and the remaining unpaid balance. It is felt that this data is not needed in all cases and in most, if not all cases, it is out of date shortly after receipt. This is especially true of contractors having a number of purchase orders or contracts near physical completion.

The proposed rule was published in the Federal Register together with a request for comments on March 7, 1991 (see 56 FR 9832). Comments were requested on or before May 6, 1991. Ten responses were received consisting of no comments and concurrences.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the revision is considered to be less burdensome than the existing requirement. Comments were invited from small businesses and other interested parties (see 56 FR 9832, March 7, 1991) and none were received concerning this subject.

C. Paperwork Reduction Act

Since this rule is considered to reduce the burden on the contractor, a request for a decrease in burden hours for OMB Control No. 9000–0076, Novation/Change of Name Requirements, was submitted to OMB for approval. The Notice of OMB Request for Clearance appeared in the Federal Register on March 7, 1991 (see 56 FR 9690). An approval, valid through May 31, 1994, was received from OMB on May 16, 1991.

List of Subjects in 48 CFR Part 42

Government procurement.

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 42 is amended as set forth below:

PART 42—CONTRACT ADMINISTRATION

1. The authority citation for 48 CFR part 42 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 42.1205 is amended by revising paragraph (a)(3) to read as follows:

42.1205 Agreement to recognize contractor's change of name.

(a) * * *

(3) A list of all affected contracts and purchase orders remaining unsettled between the contractor and the Government, showing for each the contract number and type, and name and address of the contracting office. The contracting officer may request the total dollar value as amended and the remaining unpaid balance for each contract.

* * * * *

[FR Doc. 91–30761 Filed 12–26–91; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 49

[FAC 90–9; FAR Case 91–43; Item X]

Federal Acquisition Regulation; Termination of Contracts

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to the following changes to FAR part 49: FAR 49.101(f) is added to clearly establish that the release of excess funds after termination is the responsibility of the contracting officer unless specifically delegated to the termination contracting officer (TCO). A corresponding change is made to 49.105–2. FAR 49.110 is amended by revising its heading to read "Settlement Negotiation Memorandum" to differentiate from the memorandum developed under 15.800, Price Negotiation. Revisions to paragraph (a) clarify the responsibilities and duties of the contracting officer and the TCO and the document used in termination of contracts.

EFFECTIVE DATE: February 25, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–9, FAR case 91–43.

SUPPLEMENTARY INFORMATION:

A. Background

These changes arose as a result of the Defense Management Review Regulatory Reform initiative.

B. Regulatory Flexibility Act

The rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act (RFA) does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite RFA section 610, FAR case 91–43 (FAC 90–9) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Public Law 96–511) does not apply because the rule does not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 49

Government procurement.

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 49 is amended as set forth below:

PART 49—TERMINATION OF CONTRACTS

1. The authority citation for 48 CFR part 49 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 49.101 is amended by adding paragraph (f) to read as follows:

49.101 Authorities and responsibilities.

* * * * *

(f) The contracting officer is responsible for the release of excess funds resulting from the termination unless this responsibility is specifically delegated to the TCO.

3. Section 49.105–2 is revised to read as follows:

49.105–2 Release of excess funds.

(a) The TCO shall estimate the funds required to settle the termination, and within 30 days after the receipt of the termination notice, recommend the release of excess funds to the contracting officer. The initial deobligation of excess funds should be

accomplished in a timely manner by the contracting officer, or the TCO, if delegated the responsibility. The TCO shall not recommend the release of amounts under $1,000, unless requested by the contracting officer.

(b) The TCO shall maintain continuous surveillance of required funds to permit timely release of any additional excess funds (a recommended format for release of excess funds is in 49.604). If previous releases of excess funds result in a shortage of the amount required for settlement, the TCO shall promptly inform the contracting officer, who shall reinstate the funds within 30 days.

4. Section 49.110 is amended by renaming the section heading and revising paragraph (a) to read as follows:

49.110 Settlement negotiation memorandum.

(a) The TCO shall, at the conclusion of negotiations, prepare a settlement negotiation memorandum describing the principal elements of the settlement for inclusion in the termination case file and for use by reviewing authorities. Pricing aspects of the settlement shall be documented in accordance with 15.808(a). The memorandum shall be distributed in accordance with 15.808(b).

* * * * *

[FR Doc. 91-30762 Filed 12-26-91; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 50

[FAC 90-9; FAR Case 91-15; Item XI]

RIN 9000-AE56

Federal Acquisition Regulation; (FAR); Extraordinary Contractual Actions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule revising FAR 50.203(b)(4) by removing the words "and neither House of Congress has adopted a resolution disapproving the obligation." The revisions are the result of amendments to Public Law 85-804 (50 U.S.C. 1431), by Public Law 101-510 (title XIII, section 1313), and Public Law 102-25 (title VII, section 705(f)).

EFFECTIVE DATE: February 25, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501-3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-9, FAR case 91-15.

SUPPLEMENTARY INFORMATION:

A. Background

FAR 50.203(B)(4) currently requires advance notice to Congress and a subsequent 60-day waiting period for any contract, amendment, or modification executed under the authority of Public Law 85-804 which will obligate the Government for an amount in excess of $25 million.

Section 1313 of title XIII of the National Defense Authorization Act for Fiscal Year 1991 (Pub. L. 101-510) amended Public Law 85-804 (50 U.S.C. 1431) by revising the third sentence to eliminate the 60 days of continuous session and the remainder of the sentence.

Section 705(f) of title VII of Public Law 102-25 further amended Public Law 85-804 (50 U.S.C. 1431) by revising the third sentence by inserting "and 60 days of continuous session of Congress have expired following the date on which such notice was transmitted to such Committees" before the period.

FAR 50.203(b)(4) has been revised accordingly. Because the revisions concern internal agency procedures only, a decision was made by the Councils to issue the rule as a final rule and not a proposed rule.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite FAC 90-9, FAR case 91-15 in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the final rule does not impose any recordkeeping requirements or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 50

Government procurement.

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 50 is amended as set forth below:

PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS

1. The authority citation for 48 CFR part 50 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 50.203 is amended by revising paragraph (b)(4) to read as follows:

50.203 Limitations on exercise of authority.

* * * * *

(b) * * *

(4) That will obligate the Government for any amount over $25 million, unless the Senate and the House Committees on Armed Services are notified in writing of the proposed obligation and 60 days of continuous session of Congress have passed since the transmittal of such notification. However, this paragraph (b)(4) does not apply to indemnification agreements authorized under 50.403.

* * * * *

[FR Doc. 91-30763 Filed 12-26-91; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 90-9; FAR Case 90-58; Item XII]

RIN 9000-AE27

Federal Acquisition Regulation; Inspection of Services—Fixed-Price

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Agency Regulations Council have agreed on a final rule amending 52.246-4, Inspection of Services—Fixed-Price,

by adding a new paragraph (d) which will allow the Government to inspect or test at the contractor's or subcontractor's facility and requires the contractor to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties.

EFFECTIVE DATE: February 25, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4041, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–9, FAR case 90–58.

SUPPLEMENTARY INFORMATION:

A. Background

This rule is the result of a recommendation made by the Defense Management Review Regulatory Relief Task Force after its review of DOD regulations. It reflects language which is being removed from a component level regulation for more appropriate placement in the FAR.

The amendment to 52.246–4, Inspection of Services—Fixed Price, was published in the **Federal Register** as a proposed rule, together with a request for comments on December 19, 1990 (see 55 FR 52158). The 12 responses that were received consisted of 11 concurrences and no comments and one comment. The respondent recommended removing the phrase "without additional charge" from paragraph (d) of the clause. The Councils approved a recommendation to publish the proposed rule as a final rule without change.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the existing language in 52.246–4 is being clarified and is consistent with the coverage in 52.246–2.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR part 52 is amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 52.246–4 is amended by revising the introductory text; revising the date of the clause to read "(FEB 1992)"; redesignating existing paragraphs (d) and (e) as paragraph (e) and (f), and adding a new paragraph (d); and removing the derivation line following "(End of clause)" to read as follows:

52.246–4 Inspection of Services—Fixed-Price.

As prescribed in 46.304, insert the following clause:

Inspection of Services—Fixed-Price (Feb. 1992)

* * * * *

(d) If the Government performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties.

* * * * *

[FR Doc. 91–30764 Filed 12–26–91; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8, 22, 33, 45, 52, and 53

[Federal Acquisition Circular 90–9; Item XIII]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical amendments and corrections.

SUMMARY: Technical amendments or corrections have been made to FAR sections 8.705–2, 8.705–4(a), 22.1003–5(k), 33.103(b)(1), 45.608–8(b), 52.202–1, 52.203–4, 52.215–39, 52.228–11(b)(1), and 53.203(b) to correct inaccuracies and update information. The authorization for use and local reproduction of Optional Form 333 requires a pen-and-ink change by revising the date to read "March 31, 1992".

EFFECTIVE DATE: February 25, 1992.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–9.

Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR parts 8, 22, 33, 45, 52, and 53 are amended as set forth in the technical amendments appearing below:

1. The authority citation for 48 CFR parts 8, 22, 33, 45, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 8—[AMENDED]

8.705–2 and 8.705–4 [Technical correction]

2. Section 8.705–2 is corrected in the last two sentences by removing the words "leadtime" and inserting in their place the words "lead time"; section 8.705–4 is corrected in paragraph (a) by removing the word "leadtime" and inserting in its place the words "lead time".

PART 22—[AMENDED]

22.1003–5 [Technical amendment]

3. Section 22.1003–5 is amended in paragraph (k) by removing the word "telecommunication,".

PART 33—[AMENDED]

33.103 [Technical correction]

4. Section 33.103 is corrected in paragraph (b)(1) by removing the word "clause" and inserting in its place the word "provision".

5. Section 45.608–8(b) is amended by revising Item 5 to read as follows:

PART 45—[AMENDED]

45.608–8 Report of excess personal property (SF 120).

* * * * *

(b) * * *

Item 5, To. Enter the name(s) and address(es) of the screening agencies or the GSA regional office serving the geographic area in which the property is located.

* * * * *

PART 52—[AMENDED]

52.202-1 [Technical correction]

6. Section 52.202-1 is corrected in the clause title by removing the date "(APR 1984)" and inserting in its place "(SEPT 1991)".

52.203-4 [Technical correction]

7. Section 52.203-4 is corrected at the end of the first sentence by removing "(b)(6)" and inserting in its place "(b)(5)".

52.215-39 [Technical correction]

8. Section 52.215-39 is amended by revising the reference "FAR 31.205-6(o)(4)" to read "FAR 31.205-6(o)(5)".

52.228-11 [Technical correction]

9. Section 52.228-11 is corrected in paragraph (b)(1) by removing the word "sureties" and inserting in its place "securities".

PART 53—[AMENDED]

53.203 [Technical amendment]

10. Section 53.203 is amended in the last sentence of paragraph (b) by removing the date "March 31, 1991" and inserting in its place "March 31, 1992".

[FR Doc. 91-30765 Filed 12-26-91; 8:45 am]
BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

FAR/FIRMR on CD-ROM Available Through the Superintendent of Documents

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability.

SUMMARY: The texts of the Federal Acquisition Regulation (FAR) and the Federal Information Resources Management Regulation (FIRMR) are available on an electronic medium—Compact Disk-Read Only Memory (CD-ROM). These texts are on a single disk and will be updated quarterly. The disk is available for purchase from the Superintendent of Documents on an annual subscription basis for $106.

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For the FIRMR, contact Mr. Donald Chiarella, IRMS Regulations Branch, GSA, 18th & F Streets, NW., room 3224, Washington, DC, 20405, telephone (202) 501-0836 or FTS 8-241-0836.

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Dated: December 19, 1991.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

[FR Doc. 91-30766 Filed 12-26-91; 8:45 am]

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LIST OF PUBLIC LAWS

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The List of Public Laws may be used in conjunction with "P L U S" (Public Laws Update Service) on 202-523-6641 The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws" from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470).

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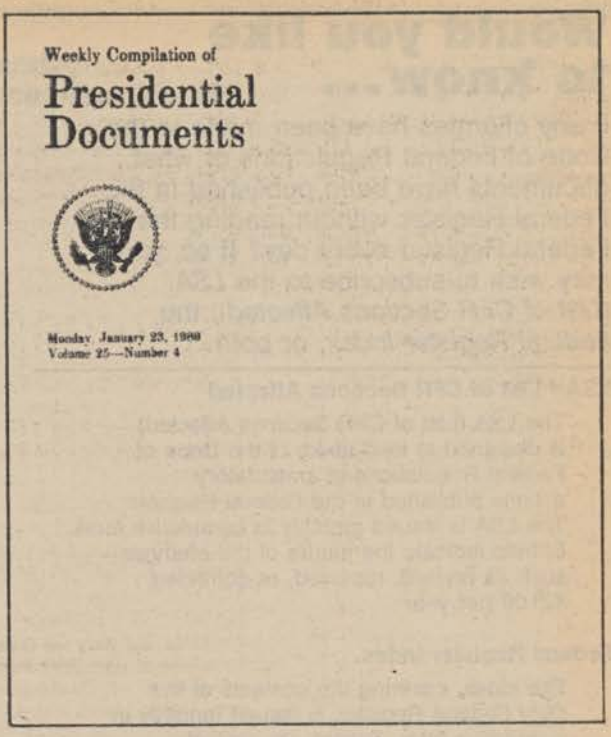

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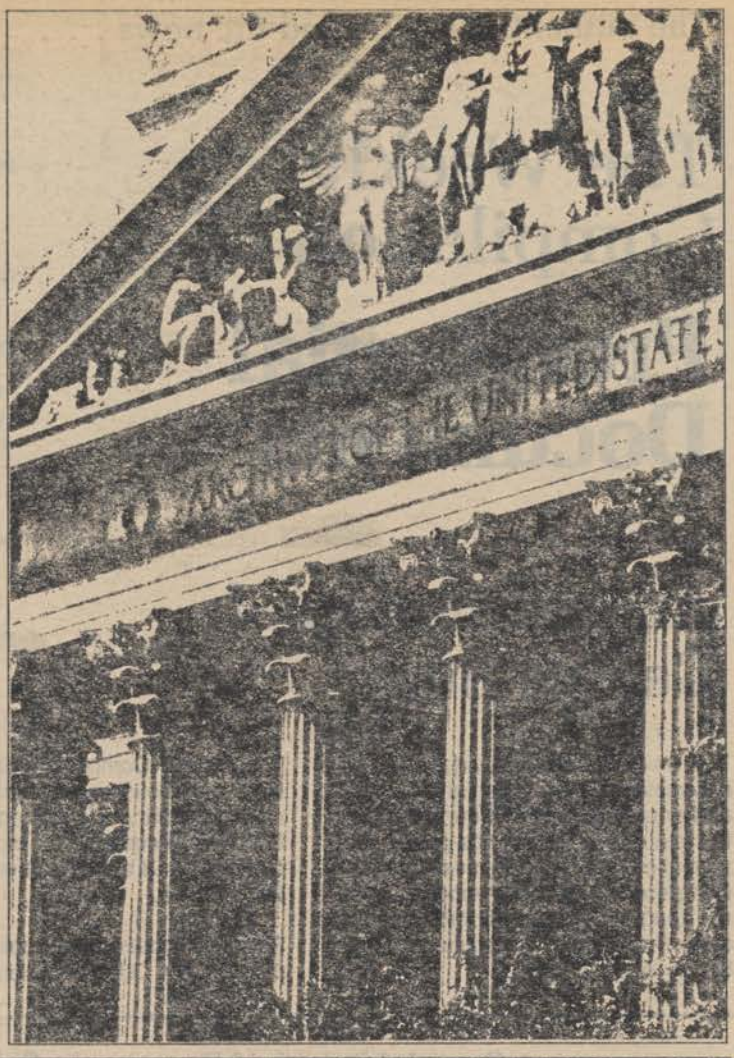

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